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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1932

No. 315

KARL F. VOEHL, PETITIONER,

vs.

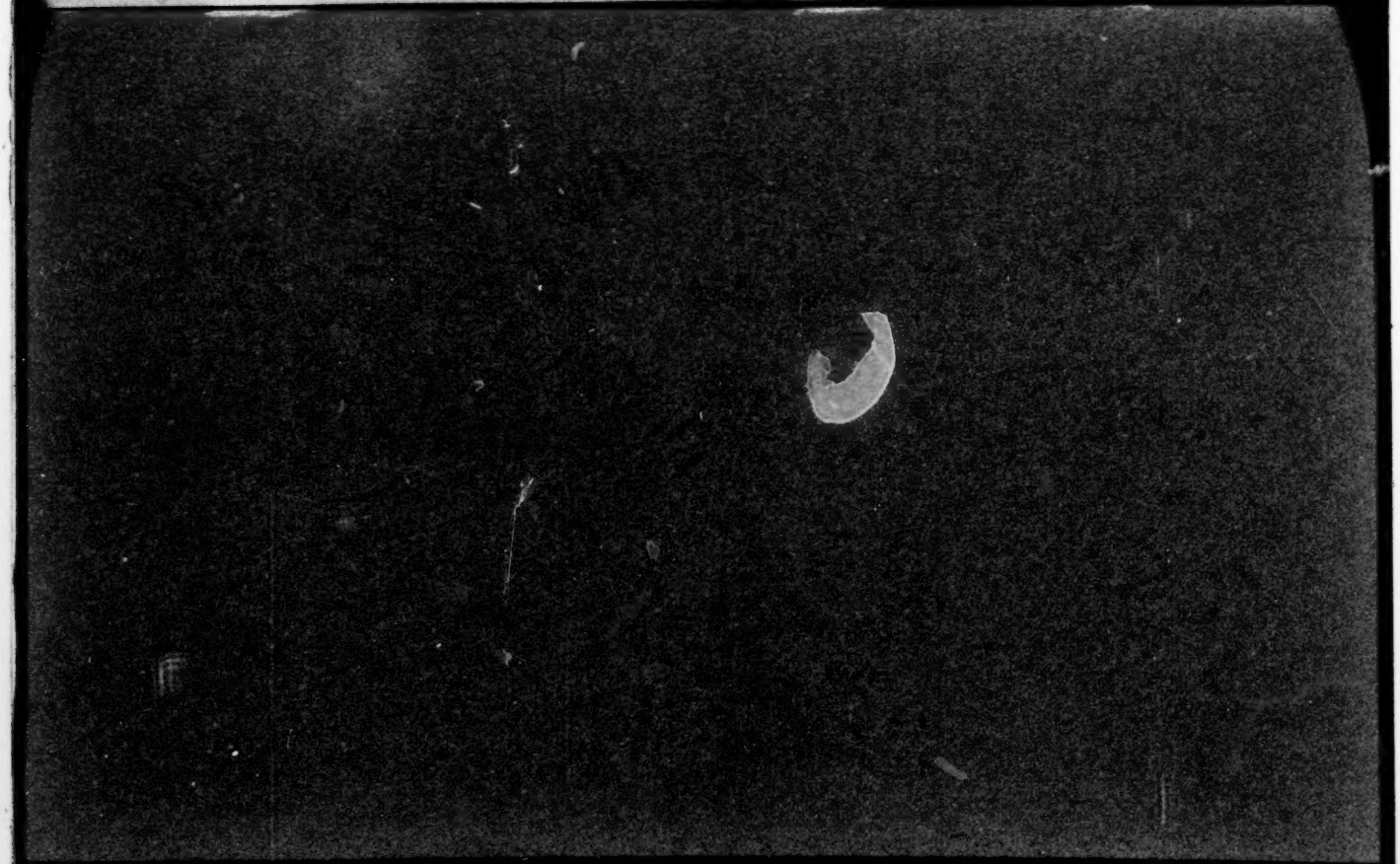
INDEMNITY INSURANCE COMPANY OF NORTH AMERICA

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED AUGUST 24, 1932

CERTIORARI GRANTED NOVEMBER 21, 1932

(37,012)



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[fol. 2]

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA, HOLDING EQUITY COURT

In Equity. No. 52413

INDEMNITY INSURANCE COMPANY OF NORTH AMERICA, a Corporation, Plaintiff,

vs.

ROBERT J. HOAGE, Deputy Commissioner for District of Columbia of the United States Employees' Compensation Commission, Defendant.

BILL FOR INJUNCTION—Filed February 5, 1931

The Bill of Complaint of the plaintiff, Indemnity Insurance Company of North America, respectfully represents unto the Court as follows:

1. Said plaintiff is a corporation organized and existing under the laws of the State of Pennsylvania, is engaged in business in the District of Columbia and brings this suit in its own right.

2. The defendant, Robert J. Hoage, is a citizen of the United States, a resident of the District of Columbia and is sued as Deputy Commissioner for the District of Columbia, of the United States Employees' Compensation Commission.

3. On April 6th, 1930, and for several years prior thereto, Karl F. Voehl, a resident of the State of Maryland, was employed by the National Electrical Supply Company, a corporation organized and existing under the laws of the State of Virginia and having its principal place of business at 1328 New York Avenue, Northwest, in the City of Washington, District of Columbia, said Company being hereinafter described as the "employer."

4. Pursuant to the provisions of an Act of Congress approved March 4, 1927, (44 Stats. L. 1424) known as the "longshoremen's and Harbor Workers' Compensation

Act," which was made applicable to certain employments in the District of Columbia by an Act aproved May 17, [fol. 3] 1928, (45 Stats. L. 600), plaintiff had issued to said employer and there was in force on April 6, 1930, a policy of insurance, No. WC-196070 insuring payment of compensation in case of injury to or death of said employer's employees arising out of and in the course of their employment.

5. On Sunday, April 6th, 1930, while said Voehl was driving an automobile, owned by him, from his home, Seat Pleasant, Maryland, towards the City of Washington, in a westerly direction along Central Avenue near the intersection of 52nd Street, Northeast, in the District of Columbia, said automobile, as a result of the steering gear becoming out of order or defective, was upset and said Voehl was seriously injured thereby.

6. Due notice of said injury was given by said Voehl to his said employer, to the plaintiff and to the defendant, and, after an investigation of the facts by the plaintiff and by the defendant, the defendant notified the plaintiff's agent, in a letter dated July 2, 1930, that from the evidence presented to his office up to that date, it appeared that Voehl was injured while traveling in his own automobile from his home to his employer's place of business; that he was not shown to have been on a special errand for his employer at the time of his injury, nor was it shown that he had arrived at his place of employment, nor that the employer provided the means of transportation for him to and from his work; that the hazard to which Voehl was subjected at the time of his injury was a traffic hazard and not one incidental to his occupation and "if these facts are correctly stated, it would not seem that the injury arose out of or occurred in the course of employment." A true copy of said letter dated July 2, 1930, is hereto attached marked "Plaintiff's Exhibit 1" and prayed to be read as a part hereof.

7. Thereafter on or about October 7, 1930, said Voehl filed with the defendant a formal claim for compensation, a copy of said claim appearing on page 62 of the transcript hereto attached marked "Plaintiff's Exhibit 2."

8. Thereafter the plaintiff duly notified the defendant that the question of its liability under said Compensation

Act was controverted and the defendant ordered a hearing thereon.

[fol. 4] 9. At such hearing held before the defendant on December 11th, 1930, it was admitted by plaintiff that said employer was subject to the provisions of said Compensation Act at the date of the injury on April 6, 1930; that the relatiionship of employer and employee existed at that time between said Supply Company and Voehl; that due notice was given of the injury; that Voehl's wages amounted to about $45 per week so that, in case of temporary total disability, if he was entitled to any compensation at all, he would be entitled to the maximum compensation of $25 per week under Section 6 and to medical treatment under Section 7 of said Act, but plaintiff denied that said injury arose out of or in the course of said Voehl's employment and denied that Voehl was entitled to any compensation whatever.

10. At said hearing, besides the testimony of a physician concerning the injuries, only two witnesses testified on behalf of said Voehl, namely, Hugh L. Finnigan and C. Leslie McCrea. Their testimony is fully set forth in the complete transcript of said hearing, which is hereto attached marked "Plaintiff's Exhibit 2" and prayed to be read as part hereof. Omitting details, said witnesses testified substantially as follows:

Hugh L. Finnigan, Voehl's brother-in-law, living at Carmody Hills, about half a mile from Voehl's home on A Street, in Seat Pleasant, Maryland, testified that early in the morning on Sunday, April 6, 1930, Voehl came to Finnigan's home and asked Fninigan to go with him to his employer's warehouse in Washington to help him get a load of ashes, which they planned to dump on A Street in the mud in front of the house, Voehl saying that he needed help to lift the big cans of ashes, but he did not need any help in cleaning up the warehouse; they then went back to Voehl's home, had breakfast there, then started to the warehouse located at 1328 New York Avenue N. W., in Washington, Voehl driving his own car, and after crossing the District Line, the accident occurred at 52nd Street and Central Avenue N. E.; that after the accident, while on the first aid table, Voehle was worrying about the ashes, "that was the only thing that bothered him," and Finni-

gan, with the help of another brother-in-law, borrowed a truck and, at Voehl's request, removed the ashes from the [fol. 5] Supply Company's plant and dumped them on Carmody Road; they did not plan to go on any personal errands going to or coming from the warehouse; they expected to drive to the warehouse, pick up the Company's truck and move the ashes; Voehl also said something about cleaning up the plant; Finnigan made no charge for his services; he had accompanied Voehl to the warehouse on only one occasion previously and then, after working hours, he helped Voehl load and haul a truck load of lumber and trash to Voehl's home where the lumber was used for kindling wood and the trash was destroyed; on other occasions, Voehl had brought ashes and trash out to his home and Finnegan had helped him to dump them.

C. Leslie McCrea, manager of the refrigeration division of the Supply Company, testified that Voehl was employed under him as "Head of products division," and, in that capacity, supervised unloading refrigerators, placing them in the warehouse, unpacking, delivery and installation in customers' homes; he was charged with seeing that buildings were kept in proper order and fire rules complied with; his regular hours were from 7:30 a. m. to 5:30 p. m. on week days; the Company, at its expense, put a telephone in his house and when customers called after store hours, Voehl would take care of the call personally or instruct one of the service men to do so, as they maintained 24 hour service on their refrigerators; Voehl was trusted with a key to the warehouse for that purpose; as manager of the warehouse and service, Voehl had charge of overtime for all employees and on Monday morning each week, he submitted a memorandum of his own overtime as well as that of other employees; employees, who owned automobiles, when on service calls, were allowed overtime pay and mileage at five cents a mile from the time they left their homes until their return; Voehl's overtime was never questioned when he worked extra hours; McCrea did not know the condition of the warehouse with respect to cleanliness on the day of the accident, or the day before, but knows it was their busy season and the unpacking of many refrigerators is always attended by an accumulation of trash which must be cleared up; Voehl and other employees were permitted to take boards and trash for their own use,

as it saved the Company the cost of hauling it away; Voehl had about twelve men employed under him at the ware-[fol. 6] house and two service men; the removal of the ashes was not a part of Voehl's duty and was not even incidental to the operation of the refrigeration department; the taking away of the lumber was not a duty assigned to Voehl; Voehl was not paid for his mileage from his home to and from work during the week; "one of the troubles I had with Voehl was that he always insisted on doing too damned much work himself;" he would tear a crate to pieces and pile up the lumber instead of making others do it; McCrea did not know of any Sunday on which Voehl worked previous to the accident; the Company did not furnish transportation to any employees going to and from work on week days, but if they came to work on Sundays for any particular purpose, they were allowed mileage from the time they left their homes; when the men quit their day's work and took ashes home, they were not paid extra time because they had ashes with them, as it was a convenience for the employees solely.

At the hearing, McCrea was requested to furnish a record of payments made to Voehl for overtime and mileage during the six months preceding April 6, 1930, and replied by letter, dated December 19, 1930 (pages 67-69 of Exhibit 2), that the records for 1929 had been destroyed; that Voehl had a petty cash fund, out of which he paid himself for mileage and overtime and then turned in a memorandum thereof, but it was difficult to give an accurate statement of dates and amounts; that "based on a study of our entire operation for the first three months of 1930", he found an instance on Sunday, February 2, 1930, when Voehl came to the warehouse without specific instructions, but for the purpose of (1) removing an exhibit from Washington Auditorium at the conclusion of the automobile show, (2) to generally arrange and straighten up the warehouse, and (3) to take an inventory of stock on hand; "on February 3, 1930, we honored his request for mileage covering this trip in the amount of 20 miles at 5¢ per mile, or $1.00, and under date of February 6, 1930, we paid him the sum of $11.00 to replenish his petty cash fund. Part of the memorandum given us to cover this disbursement of $11.00 shows a payment of $2.25 in connection with the removal of the automobile show exhibit."

Voehl did not testify at the hearing, but in lieu thereof filed a statement (pages 63-66), which corroborated and [fol. 7] repeated some of the statements above summarized and in addition thereto stated that he had to come down quite often on Sunday to clean up; that his mileage and time were computed from his home until he returned home, was not confined to ordered calls to customers' homes, but whenever he felt it necessary to make a special trip to the building, as on the day of the accident, he was paid for mileage and overtime; that he did not have to receive special authority from his foreman, but exercised his own discretion as to the necessity for the trip; that he had general orders not to let trash accumulate in the building and did his utmost to see that it was free of all trash, when inspection was made every Monday morning; he was unusually busy and handled about 20 or 30 refrigerators per day about the time of the accident; this caused trash to accumulate faster, making it necessary for him to come down to the building the Sunday of the accident; he would dispose of the trash, ashes and timber either on the dump, at the homes of employees or at his own home, as it made no difference to his employer as long as he rid the building of it.

11. Said witnesses, with the exception of Voehl, were cross-examined by counsel for plaintiff and the substance of their testimony on such cross-examination is set forth in the foregoing paragraph. No other testimony was offered by the plaintiff at said hearing.

12. Thereafter briefs were filed with the defendant on behalf of plaintiff and on behalf of Voehl, and under date of January 8, 1931, the defendant made and filed a compensation order, containing findings of fact and an award, a true copy of which is hereto attached marked "Plaintiff's Exhibit No. 3". Said findings contain a conclusion of law that Voehl's injury arose out of and occurred in the course of his employment and said award directs said Supply Company and the plaintiff to pay Voehl forthwith compensation for temporary total disability, beginning April 6, 1930, to January 3, 1931, a period of 39 weeks, at $25.00 per week, amounting to $975.00, and to continue to pay compensation beginning January 4, 1931, at $25.00 per week, payable every two weeks, until further order of de-

fendant; to pay Voehl's attorney, Israel J. Mendelson, $50 for legal services and to provide medical and hospital treatment in accordance with Section 7 of said Compensation Act as the nature of the injury and process of recovery may require.

[fol. 8] 13. Plaintiff avers and charges that Voehl's said injury did not arise out of or in the course of his employment; that Voehl's said claim does not come within the provisions of said Compensation Act; that said compensation order, findings of fact and award are "not in accordance with law," and are not supported by, but are directly contrary to the evidence presented to the defendant at said hearing.

Wherefore, in consideration of the premises, plaintiff prays:

1. That a writ of subpœna be issued by this Court against said defendant, Robert J. Hoage, Deputy Commissioner, requiring him, by a day certain to be therein named, to appear herein and answer the exigencies of this Bill of Complaint;

2. That an injunction issue, pendent lite and permanently, restraining the enforcement of said compensation order and award and requiring the defendant to vacate and set the same aside;

3. That the payment of said award be stayed, pending final decision herein;

4. That the plaintiff may have such other and further relief as the nature of the case may require and to the Court may seem proper.

Indemnity Insurance Company of North America, by E. W. Miller, Its Vice-President. McKenney, Flannery & Craighill, by G. B. Craighill, Tebbs & Myers, Attorneys for Plaintiff.

Duly sworn to by E. W. Miller. Jurat omitted in printing.

[fol. 9] PLAINTIFF'S EXHIBIT NO. 1 TO BILL OF COMPLAINT

52413

United States Employees' Compensation Commission, District of Columbia Workmen's Compensation Act, Room 400 Investment Building, Washington, D. C.

Commissioners: Bessie P. Brueggeman, Chairman; Harry Bassett, John M. Morin. Robert J. Hoage, Deputy Commissioner.

In reply refer to File No. —.

July 2, 1930.

Ralph W. Lee & Company, 1508 L Street N. W., Washington, D. C.

GENTLEMEN: Regarding the case of Karl F. Voehl vs. the National Electric- Supply Company, it is noted that you have submitted certain facts to this office for consideration with respect to the compensability of the case.

From the evidence presented to this office to date it appears that the facts in the case are as follows:

(1) Mr. Voehl was injured in an automobile accident on or about Sunday, April 6, 1930, while travelling from his home to his employer's place of business, the National Electrical Supply Company at 1330 New York Avenue N. W., Washington, D. C.

(2) It is presumed that Mr. Voehl reported to this place daily, furnishing his own car as means of transportation to and from his work.

(3) The employer paid Mr. Voehl mileage for the use of his car when he went on special errands, but he was not shown to have been on a special errand for the employer [fol. 10] at the time of his injury, nor was it shown that he had arrived at his place of employment.

(4) It has not been shown that the employer provided the means of transportation for the claimant to and from his work.

(5) The hazard to which the claimant was subjected at the time he was injured was a traffic hazard and not one incidental to his occupation.

If these facts are correctly stated, it would not seem that the injury arose out of or occurred in the course of employ-

ment. If, however, there are other facts which would alter the status of the case they should be submitted for further consideration by this office.

Very truly yours, R. J. Hoage, Deputy Commissioner.
RJH/l.

PLAINTIFF'S EXHIBIT NO. 2 TO BILL OF COMPLAINT

United States Employees' Compensation Commission for the District of Columbia

Before Hon. R. J. Hoage, Deputy Commissioner for the District of Columbia

No. 322-33

KARL F. VOEHL, Claimant,

vs.

NATIONAL ELECTRIC- SUPPLY CO., Employer; Indemnity Insurance Company of North America, Insurance Carrier

Transcript of Testimony at Hearing

Pursuant to notice, this matter was heard before Honorable R. J. Hoage, Deputy Commissioner, United States Employees' Compensation Commission, at Washington, D. C., on the 11th day of December, 1930, at —.

Appearances: Israel J. Mendelson, Esq., Attorney for Claimant; Frank H. Myers, Esq., Attorney for Respondent.

[fol. 11] COLLOQUY

The Deputy Commissioner: This is the case of Karl F. Voehl, claimant, against the National Electric- Supply Company, the employer, and the Indemnity Insurance Company of North America, the insurance carrier.

Having been formally set for hearing the case is presented for consideration at this time.

The parties present are — Is the claimant present?

Mr. Mendelson: No; the claimant is incapacitated.

The Deputy Commissioner: Then you are representing the claimant, Mr. Mendelson?

Mr. Mendelson: Yes.

The Deputy Commissioner: And what witnesses have you?

Mr. Mendelson: I have Mr. Hugh L. Finnigan and Mr. C. Leslie McCree and Dr. R. Apgar.

The Deputy Commissioner: Representing the respondent is Mr. Frank H. Myers?

Mr. Myers: Yes.

The Deputy Commissioner: What witnesses have you, Mr. Myers?

Mr. Myers: We have no witnesses.

The Deputy Commissioner: Mr. Myers, you are representing the respondent, the insurance carrier?

Mr. Myers: Yes.

The Deputy Commissioner: Do you admit that the employer, Mr. Myers, was subject to the provisions of the District of Columbia Workmen's Compensation Act at the date of the alleged injury?

Mr. Myers: Yes.

The Deputy Commissioner: And do you admit, Mr. Myers, that the relationship of employer and employee existed at the date of the alleged injury?

Mr. Myers: The relationship; that is, no duties were being performed for the employer.

The Deputy Commissioner: I mean the relationship of employer and employee existed on that date?

Mr. Myers: Yes.

The Deputy Commissioner: How about the notice of injury, Mr. Myers?

Mr. Myers: I admit due notice of injury.

The Deputy Commissioner: You admit that due notice of injury was given to the employer and to the Deputy Commissioner?

[fol. 12] Mr. Myers: Yes.

The Deputy Commissioner: Well, now, how about the wages? Can we agree, so that we won't have that question, on that?

I believe it will be necessary because of statements contained in the file of the Deputy Commissioner that the actual earnings of the employee for one year preceding the date of the injury — furnished the Deputy Commissioner by the employer and I so order.

Will you admit that statement if it is under the signature of the employer, Mr. Myers?

Mr. Myers: Yes.

The Deputy Commisioner: Will that be agreeable to you, Mr. Mendelson?

Mr. Mendelson: Yes.

Mr. McCree (representative of the employer): You can put in a statement that they were approximately $2500.

The Deputy Commissioner: I will have to have it in a definite record signed by you, under oath, before a notary public, and introduce that as part of the proceedings, and we agree that it will be considered part of the proceedings.

Mr. McCree: All right.

The Deputy Commissioner: Can we agree, for the purpose of this hearing, gentlemen, that it was approximately -2500?

Mr. Myers: I will agree that it is a maximum case. Both the employee and the employer claim that.

The Deputy Commissioner: Then we can agree that it is a maximum case?

Mr. Mendelson: Yes.

Mr. Myers: Yes.

The Deputy Commissioner: Now, Mr. Mendelson, will you make a statement of what your claim is in this case, for the purposes of the record?

Mr. Mendelson: Mr. Karl F. Voehl was employed by the National Electric Supply Company——

The Deputy Commissioner (interposing): That is admitted.

Mr. Mendelson: And, on Sunday, April 6th, around 8 o'clock, he left his home in company with Mr. Finnigan, his brother-in-law, to go to the plant, that is the building of the National Electric Supply Company, to clean up the place.

[fol. 13] The Deputy Commissioner: Your claim is he left, in the performance of his duty, to go to this particular place?

Mr. Mendelson: Yes.

The Deputy Commissioner: That will be sufficient.

Mr. Mendelson: And, on the way to the plant, in that capacity, he was met with an accident in which he was injured.

The Deputy Commissioner: And you are claiming compensation for temporary total disability from the date of the injury to the present time and still continuing?

Mr. Mendelson: Yes, and still continuing.

The Deputy Commissioner: And you are making claim for medical treatment, and so forth, in accordance with section 7 of the Act?

Mr. Mendelson: Yes.

The Deputy Commissioner: Now, Mr. Myers, what is your denial?

Mr. Myers: We deny that the injury arose during the course of employment and while performing duties for the employer.

The Deputy Commissioner: Then, you deny that it arose out of or in the course of the employment as provided in the Act?

Mr. Myers: Yes.

The Deputy Commissioner: I think at this time that I had better make part of this record Form D. C. C. A-303, entitled: "Employee's Claim for Compensation" filed in the office of the Deputy Commissioner on October 30th, 1930, in accordance with the District of Columbia Workmen's Compensation Act, in which it is indicated that Karl F. Voehl, the employee, was in the employ of the National Electric Supply Company and was injured on the 6th day of April at about 8:30 o'clock a. m. Is that correct, Mr. Myers?

Mr. Myers: That is what the form says.

(The document in question was thereupon marked: "Claimant's Exhibit No. 1" and, as such, is filed in the office of the Deputy Commissioner with the original papers in this case.)

The Deputy Commissioner: All right, Mr. Mendelson, you may proceed to set up your case.

[fol. 14] First, I will swear the witnesses, Mr. Finnigan, and Mr. McCree.

Mr. Mendelson: All right.

(Thereupon Hugh L. Finnigan and C. Leslie McCree were duly sworn by the Deputy Commissioner.)

The Deputy Commissioner: You may proceed, Mr. Mendelson.

Mr. Mendelson: All right, I will call Mr. Finnigan.

Mr. Myers: Suppose we exclude Mr. McCree while the other witness is testifying.

The Deputy Commissioner: You may, but he is the employer here.

Mr. Myers: But, he is not our witness, however.

(At this point Mr. McCree retired from the hearing room.)

Thereupon HUGH L. FINNIGAN was called as a witness for and on behalf of the claimant and, having been previously duly sworn, as above indicated, was examined and testified as follows:

Direct examination.

By Mr. Mendelson:

Q. Mr. Finnigan, you knew Mr. Voehl?
A. Yes, sir.

The Deputy Commissioner: What is your full name?
The Witness: Hugh Larkin Finnigan.

By the Deputy Commissioner:

Q. And your address?
A. 6603 Carmody Road, Carmody Hills, Maryland.

The Deputy Commissioner: All right.

By Mr. Mendelson:

Q. You know Mr. Voehl?
A. I certainly do.
Q. Is he related to you?
A. He is my brother-in-law.
Q. Did you have occasion to be with Mr. Voehl on or about April 6th, 1930?
A. As to the exact date I cannot swear, but I was with him if you are referring to the time of the accident, yes.
[fol. 15] Q. Yes. Now, will you state the occasion and if anything unusual happened on that date?

The Deputy Commissioner: I think we can admit there was an accident and he suffered an injury. Cannot we admit that, Mr. Myers?
Mr. Myers: I imagine we can.
The Deputy Commissioner: An injury on the trip.

Mr. Myers: Yes.

The Deputy Commissioner: So we won't have to waste time on that.

Mr. Myers: No.

By Mr. Mendelson:

Q. Well, what reasons did he give you for your accompanying him that day?

A. Well, he came over to the house that Sunday morning and told me he would like me to go with him to the warehouse, that he hated to bother me so early in the morning but he had to move the ashes there and needed help for that but he could clean up the warehouse, he said, and he said he did not need any help for that. That is the reason he asked me to accompany him.

Q. Did you ever have occasion to go with him previous to this time?

A. No, I did not go to the warehouse cleaning up with him except one evening I went with him after working hours; we went there and we took a truck load of trash away.

Q. What did you do after the accident?

A. After the accident I got in touch with my other brother-in-law who lives in Silver Spring.

By the Deputy Commissioner:

Q. What is his name?

A. Andrew Archer and, together, we went in and borrowed a truck from Mr. Monroe who does quite a little hauling for the National Electric Company and him and I removed the ashes because my brother-in-law said that they had to be removed and while he was on the first aid table he was worrying about the ashes and said they had to be gotten away from there. That was the only thing that bothered him.

By Mr. Mendelson:

Q. Was it at his request that you went to the plant?

A. Yes.

[fol. 16] Q. And you did remove ashes that day?

A. Yes.

Q. What else did you do around there?

A. That was all. We did not go to the warehouse. We had no authority to go there.

Q. What did you do with the ashes?

A. The ashes were dumped on Carmody Road.

Q. Where is that with reference to the home of Mr. Voehl?

A. With reference to the home of Mr. Voehl, that would be about five blocks away from Carmody Road—I would say a half a mile it would be to Mr. Voehl's residence. We took the truck out from there after we loaded it with ashes, we took the truck out and we tried to salvage his machine and could not do it, and then we dumped the ashes.

Q. What is the nature of the dumping place, a public one?

A. Yes, a public road, a county road.

Q. Had you planned to go to any other place on the day of the accident?

A. After he was through with his work, yes. After he was through with what he said he had to do we had planned, as we always had done, traveling down the country.

Q. Did you plan to go on any errands on your way back home?

A. No.

Q. By "errands" I mean personal errands. Is that what you refer to?

A. No errands of any kind, either going into there or coming back to the house again.

Mr. Mendelson: That is all.

Cross-examination.

By Mr. Myers:

Q. Mr. Finnigan, have you ever gone to move the ashes there before this time?

A. No, the only time I went there and Mr. Voehl was using the company truck and would bring the ashes out to his place and loads of trash and then I would help him dump them.

Q. When was that?

A. That happened often, practically off and on as every winter he had been working there.

Q. Was the company truck used on each one of those occasions?

A. Yes.

Q. How did you expect to move the ashes this time?

A. Mr. Voehl was to use the company's truck.

[fol. 17] Q. You drove in with Mr. Voehl's car and you were to pick up the——

A. (Interposing.) We were to pick up the truck at the warehouse. Well, Mr. Voehl was to do that.

Q. Where was that truck?

A. In the warehouse.

Q. He was to pick up the truck at the warehouse and move the ashes?

A. Yes, sir.

Q. Was it your intention to do anything else besides move the ashes that day?

A. He had said something about cleaning up the plant for Monday morning.

Q. What was your intention to do in reference to cleaning up the plant? Were you to help him clean up the plant?

A. No, he said—I gladly would have helped him—but he said that he would not bother me except for the ashes; the other work he would have done himself but he could not lift the big galvanized cans of ashes.

Q. Who lifted the ashes on previous occasions?

A. He had his son help him, his oldest son, his oldest boy.

Q. You had only once been before to the warehouse to assist Mr. Voehl?

A. Yes.

Q. When was that?

A. Oh that has been, that has been over a year ago.

Q. What was the occasion of that?

A. That was up there loading lumber and boxes of trash on the truck.

Q. Where did you take those?

A. That was taken out to his house.

Q. Was Mr. Voehl given those things as part of his duties?

A. Why, all that lumber and stuff there, from what I have seen personally, why, goes to all the employees there.

The Deputy Commissioner: I think the question and answer both ought to be stricken. He does not know the duties at the plant.

Mr. Myers: The question was not as to his duties, but what he did with the things.

The Deputy Commissioner: Read the question and the answer.

The Reporter (reading): "Q. Was Mr. Voehl given those things as part of his duties?

"A. Why, all that lumber and stuff there, from what I [fol. 18] have seen personally, why, goes to all the employees there."

The Witness: That is something I cannot answer.

By Mr. Myers:

Q. What did Mr. Voehl do with the kindling wood when you went there a year ago and helped him move it?

A. That was used, that was used, any that was any good was used and the rest of it was burned.

Q. Was it taken to his home?

A. To the lots adjoining his place.

Q. And the kindling wood was taken to his own home?

A. Yes.

Q. And he used it for himself?

A. Yes, sir.

Q. You did not live with him?

A. No.

Q. You are not employed by the National Electric-Supply Company?

A. I never have been; rather, I have had occasion, the other evening, to be employed by them a few hours.

Q. Who are you employed by regularly at this time?

A. Right at the present time I am one of the army of the unemployed but I am still on the payroll, subject to call, from Thomas Culler, painter and decorator, at 726 Colorado Building, the Hamilton Decorating Company.

Q. Will you be good enough to set up the route you took as you went to the warehouse on the date of the accident?

A. Certainly. We took the road—Mr. Voehl came to my house with me on Carmody Road.

Q. Where does Mr. Voehl live?

A. He lives at 2nd and A Street, Seat Pleasant, Maryland.

Q. All right, now. What was the first route you took?

A. The first road that we went on, if you want the whole route?

Q. Yes?

A. We went on A Street to Chapel Road——

Q. (Interposing.) I understand he picked you up first?

A. He picked me up first, at my house.

Q. Where is your house?

A. On Carmody Road.

Q. What is the address?

A. 6603.

Q. Is that northeast or northwest?

A. That is Seat Pleasant, outside of Seat Pleasant, Carmody Hills.

Q. How far from Mr. Voehl's house is that?

A. That is about half a mile.

[fol. 19] Q. In which direction, toward the city or away?

A. Toward the city.

Q. East or west?

A. Now, you have me. I do not know the directions out there.

Q. All right. When he picked you up, where did you go next?

A. We went past, we went back past Mr. Voehl's house.

Q. You went back past his house?

A. Yes.

Q. Then where did you go?

A. From there we went out A Street to Chapel Road.

Q. Then where?

A. And we turned right into Central Avenue.

Q. All right. Where next?

A. We continued through Capitol Heights.

Q. All right?

A. And across the District line, and the accident happened at 52nd Street and Central Avenue.

Q. What time did you leave your house?

A. I left my house about 8 o'clock.

Q. 8 a. m. in the morning?

A. Yes.

Q. And when you went back to the Voehl house, did you stop there? How long did you stop there at Mr. Voehl's house?

A. We stopped there somewhere around about fifteen minutes or a half an hour. We had breakfast there.

Q. So you left Mr. Voehl's house at about what time?

A. We left there at approximately 8:30.

Q. What time did the accident happen?

A. The accident happened—it could not have happened in about fifteen minutes from that time.

Q. About 8:45?

A. Around 8:45, yes.

Q. You stated in your direct examination that after you were through this particular work at the warehouse you planned to go somewhere else?

A. Yes, we planned to go somewhere else, to Mr. Voehl's house and from there we were going down——

Mr. Mendelson (interposing): That is immaterial.

The Witness: We were going, on that trip, that trip that we make every weekend, and, in fact, I still make it.

[fol. 20] By Mr. Myers:

Q. You have only had one other occasion, and that was about a year ago, on which occasion you went with Mr. Voehl to help him?

A. Yes, to my knowledge; it might have been other times, but I do not remember.

Mr. Myers: I think that is all I have to ask this witness.

By the Deputy Commissioner:

Q. Who paid you for your services this day, anybody?

A. Why that day I worked with Mr. Voehl there was no service, no charge at all; it was just voluntary.

Q. On the previous occasion did you get paid for your services?

A. No. There was only once that I was ever paid by the National Electric Company and that was just a few nights ago.

By Mr. Mendelson:

Q. You did this purely for Mr. Voehl?

A. Yes, to help him out.

Q. The route you had taken to go to the National Electric Supply Company, was that the shortest route to the plant?

Mr. Myers: I think the facts speak for themselves on that, Mr. Mendelson.

By the Deputy Commissioner:

Q. Is that the route he travelled every day?

A. That is the route that he travelled every day and it is the route that I travel; but, there is a shorter route. We do not travel it because it is more winding.

By Mr. Mendelson:

Q. Now, you spoke before of the disposition of the lumber and trash. Did you ever see him dispose of the trash, that is, outside of the ashes?

A. You mean destroy them?

Q. Yes?

A. He destroyed right at his place.

Q. Was there any use made of the lumber?

A. Just kindling wood, that's all.

Q. Was it all used for kindling wood?

A. No, lots of it could not be used for kindling wood and it was destroyed, those free ply boxes were all destroyed.

[fol. 21] Q. It was brought out there and then destroyed?

A. Yes.

Mr. Mendelson: That is all.

(The witness thereupon was excused and retired from the witness stand.)

Thereupon C. Leslie McCree was called as a witness for and on behalf of the claimant and, having been previously duly sworn as above indicated, was examined and testified as follows:

Direct examination.

By the Deputy Commissioner:

Q. State your full name, please, for the record?

A. C. Leslie McCree.

Q. And your address?

A. 3300 Cathedral Avenue, Northwest.

By Mr. Mendelson:

Q. What is your employment?

A. I am manager of the refrigeration division of the National Electric- Supply Company.

Q. As manager of the refrigeration division, what are your duties?

A. Complete charge of the sale, delivery, installation, collecting and seeing that refrigerators are paid for.

Q. You have charge of all the men working in that department?

A. I do.

Q. And charge of their payroll?

A. I do. That is, I have general charge of it. I fix the payroll; it is handled through the accounting department.

By the Deputy Commissioner:

Q. Do you have supervision of the work of Mr. Voehl?

A. Yes.

Mr. Mendelson: I am coming to that.

The Deputy Commissioner: All right.

By Mr. Mendelson:

Q. Mr. Voehl was employed in your division?

A. He was.

[fol. 22] Q. What is the length of his employment there?

A. He has been—the refrigeration division of the National Electric- Supply Company is about four years old. Mr. Voehl previously was employed in other divisions of the company for a total period of around sixteen years; about that.

Q. In what capacity was Mr. Voehl employed in your division?

A. Mr. Voehl had charge, first of all, of the maintenance and operation of the warehouse and, second, he was charged with seeing that service on refrigerators in operation in customers' homes, etc., was maintained. We called it: "Head of the products division".

Mr. Myers: I did not hear that.

The Witness: I said we call it: "Head of the products division."

By Mr. Myers:

Q. Head of the product- division?

A. We divide the business into sales, products and accounting.

By Mr. Mendelson:

Q. You mentioned the maintenance and operation of the warehouse. What were his duties under that heading?

A. Mr. Voehl supervised the unloading of the refrigeration units, refrigerators, placing them in the warehouse, unpacking, examination before delivery, delivery, and installation in customers' homes.

Q. What would his duties, if any, be with reference to the maintenance of the plant itself, the buildings, rather?

A. Mr. Voehl was charged with seeing that the buildings were kept in proper order and that the stock was kept in proper order and that the fire rules were all complied with, and things of that nature, general duties, that fall in a position of that kind.

Q. What was his salary?

Mr. Myers: I do not believe we need to go into that.

The Deputy Commissioner: I would like to have that gone into, Mr. Myers, please.

Mr. Myers: All right.

The Deputy Commissioner: For other purposes.

[fol. 23] By Mr. Mendelson:

Q. Before I ask you that question, what were his hours?

A. Mr. Voehl's regular hours were from 7:30 in the morning until 5:30 in the evening, with an hour off for lunch. In addition to his regular hours he was on duty all of the time, on our call. That is to say, he was a very willing employee and we kept him purposely for taking care of emergencies and seeing that all details were cleaned up properly. To that end we put a telephone in his house and had a system of relaying calls to him; when customers would call in after our regular store hours; that is, our watchman would take a call and transfer the call to Mr. Voehl and then Mr. Voehl would either take care of the call personally or he would call some other service man under his direction and tell him to go and take care of the thing and in that way we maintained a 24-hour a day service on our refrigerators which is perfectly natural because if a man breaks down, that is if his refrigerators break down on Saturday night or Sunday he does not want to wait until Monday for service or maintenance.

Mr. Voehl was trusted with a key to the warehouse for that purpose. In other words my recollection is there was only one other man beside himself who had access to the warehouse at any time in the 24-hour period.

Q. Who paid for the telephone, Mr. McCree?

A. We paid for the telephone.

Q. What was your method of paying Mr. Voehl for these calls and his work outside of the regular hours?

A. Mr. Voehl in his capacity as manager of the warehouse and service had charge of the overtime for all employees and, on Monday morning each week, he would submit to us a memorandum stating that such and such employees were entitled to so many hours' overtime during the preceding week and, included in that, would be himself.

Now, we calculate, or rather I personally feel that if we get a man out, or he goes out on an evening, we pull him out of bed, as we sometimes do, or something like that as we do frequently, we certainly ought to pay him and we do pay him from the time he leaves the house until he gets back, and they make up their time accordingly on that basis.

In addition to that, we have a combination system of furnishing transportation. That is, those employees who [fol. 24] own their own automobiles we try to assist them in paying for them and, naturally, assist ourselves to pay flat mileage a flat mileage charge for the use of their automobiles for whatever job they go on. If we send them out in the day from our warehouse on a job why, with their own car, we pay them five cents a mile from the time they leave the warehouse until the time they return and, similarly, if they are called out from their home at night, we pay them whatever the mileage is from their homes to the place they go to and from there to their home back.

Now, in the case, for example, where we were to go out to the customer's house and find a unit that was stuck—that is, inoperative,—what we would do would be to pay the mileage from the employee's home to the house, from the house down to the warehouse, from the warehouse back to the house and back to the customer's home; in other words, complete mileage for the trip.

Q. What was his pay for the time that he spent on such work?

A. It was calculated out at approximately the same rate per hour we paid during the week.

Q. Approximately how much?

A. Well, we never pinch pennies. I hesitate to say that. It would be a guess and my guess would be, if any, that he would probably collect somewhere around 75 cents to a dollar an hour for the time outside of his job; 75 cents probably would be about right per hour.

Q. You refer to these calls as being taken care of outside of his regular working hours? Was he to do any other work outside of his regular working hours for which he could put in extra time?

A. Well, Voehl was one of the most conscientious employees I have ever known. Naturally, he could not be with us sixteen years without having been so and we gave him the job and expected him to do it. If there was anything that needed to be done we could absolutely rely that he would do it and, as far as specific or detailed instructions go, it is my own policy not to give men specific instructions but to let the men do the job and I look for the results more than what we exactly tell them to do.

Q. In other words, did he have control of maintenance in the plant as he saw fit?

A. Yes. There were certain rules that he had to live up to and if they were not lived up to and I happened to [fol. 25] go over in the morning—my policy is to drop in the warehouse when least expected—and if it is not in order why, then, we talk to them about it.

Q. Was it permissible for them to put in more hours, that is hours outside of their regular employment?

A. I never questioned Voehl's overtime one bit. I have checked it enough to know that he was honest in his statements and if he put in an overtime charge for five hours or six hours or three hours that week, I am certain it was correct.

Q. But, was it permissible?

A. Yes.

Q. That was beyond the regular hours?

A. Yes, that is right.

Q. He would have the privilege of working outside the regular hours?

A. Yes.

Q. That is Mr. Voehl?

A. Yes. Well, that same thing applies too, would apply, to one or two other men we have down there. Mr. Voehl was not entirely alone in that statement.

Q. Speaking of Mr. Voehl on that particular Sunday: would you say that Mr. Voehl had the power to go to that plant under his duties?

A. Yes.

The Deputy Commissioner: You mean authority or power?

Mr. Mendelson: Authority.

The Witness: He had.

By Mr. Mendelson:

Q. Could he hand in a slip for the work that he had done on that Sunday and make a charge?

A. He could.

Q. Could he have made a charge for the mileage?

A. He could.

Q. You would have recognized it?

A. I would.

Q. Do you know of the condition of the cleanliness of the building on or about that date? A. I do not on the day of the accident, no, I did not know of the condition, but my subsequent investigation indicated the condition; in other words, I was generally familiar with the specific condition three or four days previously and while I did not actually see the warehouse on Saturday afternoon, I have what other people with me, other employees, told me.

[fol. 26] Mr. Myers: I object to that.

The Witness: If that is permissible I will tell it if it is not I won't.

The Deputy Commissioner: No, only what you know.

By Mr. Mendelson:

Q. Do you know what the condition of the plant was?

A. I know this much: I know that our busy season starts in March, our normal month's business for example——

The Deputy Commissioner (interposing): The question was about the condition of the building that day. Do you know what that condition was?

The Witness: I do not.

By Mr. Mendelson:

Q. Or a short time prior to that?

Mr. Myers: We are not interested in "a short time prior to that". We are interested in what the condition was that day.

Mr. Mendelson: If Your Honor please, it would be material. There would be a——

The Deputy Commissioner (interposing): If necessity arose on this day for any particular thing to be done——

Mr. Mendelson (interposing): That would be only an accumulation of things that arose a week prior to that day.

The Deputy Commissioner: If he knows what the condition was or if it was in a cumulative process.

The Witness: I know that the business for the first week in April was approximately three times what it had been for the weeks preceding, immediately preceding that; in the three days prior to the date of the accident we had unpacked a total of some sixty refrigerators. Now, that exact figure is subject to correction, that is merely approximate. Now, sixty refrigerators and sixty machine- produce one hundred and twenty crates and the refrigerator is packed in a large heavy board crate, or were at that time; I know from previous experience that the unpacking of that amount of material and the delivering of that amount of material is always attended by a large accumulation of trash and litter which must be cleared up.

[fol. 27] By Mr. Myers:

Q. But you don't know that it was not cleared up before the day of the accident?

A. I do not.

Mr. Myers: Then I object to the answer again.

The Witness: I do know that two or three days prior to the accident I had called his attention to the necessity of keeping it better cleared up.

By Mr. Myers:

Q. But you don't know that it was not cleared up before the day of the accident?

A. What?

Q. I am asking you: You don't know that it was not "better cleared up" as you say, the day before the accident or the day of the accident?

A. No, I do not.

The Deputy Commissioner: I think it is a matter of little importance because if the man was going there as he customarily had, that condition is not very material.

Mr. Myers: I want to again note objection to the answer to that question as being not responsive; it is merely a conclusion reached because he thought it was a busy season.

The Deputy Commissioner: It will be accepted for what it is worth, Mr. Myers.

By Mr. Mendelson:

Q. What were Mr. Voehl's orders with reference to the disposition of trash and rubbish of the plant?

A. Mr. Voehl's orders with reference to the disposition of trash and rubbish w*as*-: he was under strict orders to pile all waste packing material and the lumber in neat piles; the loose trash in boxes and to remove them immediately after their accumulation; to keep the warehouse halls clear, the aisles cleared, and to see that nothing accumulated that would cause a fire; also to keep the aisles and the windows open as required by the fire regulations.

Q. What were his orders as to the disposition of these things? Where were they to be disposed of?

A. The disposition of our trash is a matter that ordinarily costs us money. He was directed to take what he wanted for his own use, as are any of our other employees. The customary practice has been for employees when returning home from their duties to take such boards, or [fol. 28] sawed pieces of packing material—they are usually two feet long by two by four, already cut, which makes a very good fire wood, and it was their privilege to take this material home in their automobiles if they wished to and it still is. Any surplus that is not immediately removed is carried in our own truck to the dump or to some place of disposal. Naturally, if we can get employees to take it on their return home, why, it saves us money and saves us hauling and we are willing for them to do it because that costs them, that costs us nothing. They merely take it home with them.

Q. Then it was immaterial with you where the trash was disposed of or the ashes, as long as they were not in the building?

A. My specific instructions have always been to the warehouse—and they still are—I do not care how the men get rid of it even if it is necessary to hire trucks to do it.

Q. That was only incidental to the building?

A. That is right.

Q. I will ask you again, to make sure that it is on the record, what you have paid Mr. Voehl?

The Deputy Commissioner: You asked him that and he answered it.

Mr. Mendelson: All right. You may cross-examine, Mr. Myers.

Cross-examination.

By Mr. Myers:

Q. Mr. McCree, how many men did Mr. Voehl have under him?

A. At that time, of course?

Q. Oh, yes?

A. My guess would be about twelve at that time. Wait a minute, about—put two more on there, service men; there were twelve warehouse men and two on service. I would qualify that by reference to the records.

Q. And the duties of Mr. Voehl were that of a supervisor or manager of the maintenance and operation of the warehouse, in other words, special service to refrigerators in the home?

A. No.

Q. Will you repeat again the exact duties that Mr. Voehl had?

A. The title that should be applied to him is "Head of the product division". As such, he had charge of the [fol. 29] operation of the warehouse as far as the refrigerators are concerned, from the unloading to the delivery, the delivery into the customer's home and the specific service thereafter.

Q. Did you have any special man for removing ashes?

A. The ashes were—Now, I am giving you my understanding of this.

By the Deputy Commissioner:

Q. Just answer his question first.

A. No; the ashes are not a part of our particular department; the removal is incidental.

By Mr. Myers:

Q. What do you mean by "the removal is incidental"?

A. I mean the same practice has been followed with reference to ash removal as in our own case with reference to lumber removal; it is generally the practice among employees that where they need ashes for any particular purpose, and some of them do, they may take them; I know, for example, some employees who use the ashes for driveways and so forth. They have taken ashes as well as lumber.

Q. It is a matter of personal desire, then, on the part of the employees when they take the ashes?

A. Yes.

Q. And it is not a duty or was not a duty of Mr. Voehl or of any of the other employees to remove the ashes?

A. It is not the duty of the employees to remove them. It is the duty of the employees to place them in a position to be removed.

Q. So far as Mr. Voehl's duties were concerned the question of removing ashes in the company truck or in any other truck is not a part of his duties unless he wants the ashes for his own home?

A. I do not quite see what you are getting at and I don't know that I am making myself clear; we do not care what happens to the material after it is cleared up, but we are very, very much interested in keeping that material cleared up. How it is finally disposed of I don't care.

Q. My question, as far as the removal of the ashes is concerned, is that it was not an assigned duty of Mr. Voehl except where he wanted the ashes for his own use, for use in or about his own home?

[fol. 30] A. The actual taking away of the ashes from the building was not an assigned duty of Mr. Voehl's. The actual taking away of the lumber from the building was not an assigned duty to Mr. Voehl.

Q. Now, as a matter of fact, the removal of the ashes themselves was not even incidental to the operation of the refrigeration department, are they?

A. That is perfectly true.

Q. You say that Mr. Voehl's regular hours were from 7:30 in the morning to 5:30 in the evening?

A. That is right.

Q. How many days a week?

A. Seven days a week, if necessary.

Q. I am asking you about his regular hours, not the "hours if necessary". I don't mean "if necessary". I mean regular hours?

A. Five days a week, Saturdays a half day.

Q. Five and a half days a week?

A. Yes. Five and a half days a week, Saturday until 1 o'clock.

Q. Now, you spoke of paying for transportation. That is on the basis of flat mileage for the use of employees' automobiles by the employees. In this particular case Mr. Voehl owned his own machine?

A. That is correct.

Q. Did you pay for his mileage going to and from work during the week?

A. You mean from Monday to Saturday?

Q. Yes?

A. No.

Q. Now, you also said that Mr. Voehl had charge of the overtime of all employees. You mean by that the employees, the employees under him and himself?

A. That is correct.

Q. And you say that that overtime charge——

A. (Interposing.) Will you amplify the question?

Q. You say the record of the overtime was kept by Mr. Voehl?

A. Yes.

Q. How was the record of the overtime kept as far as Mr. Voehl was concerned?

A. As far as he himself was concerned?

Q. Yes?

A. He put in a statement at the end of the week.

Q. Was there any particular form on which he made these returns?

A. No.

[fol. 31] Q. I mean the returns for the overtime?

A. No. He simply handed in a memorandum. Half the time the memorandum was written on a piece of brown

paper, or something similar to that, torn off and it would say: "So much for overtime", so and so on such and such a date.

Q. Was any record kept of the mileage turned in for the use of the automobile, particularly in Mr. Voehl's case?

A. I should say not, off-hand.

Q. Are you familiar with these books at all (handing some books to the witness)?

A. I am.

Q. What are those books?

A. As far as I know, these are regular expense books that were made up in the office by the clerk to keep the cashier's record of the money paid out, based on memoranda sent in by Mr. Voehl.

Q. Would this be an accurate record of the overtime and transportation charges?

A. It would be an accurate record of what we paid.

Q. Actually what you paid?

A. Yes.

Q. And you paid without question whatever was turned in?

A. That is right.

Q. You do not know whether or not the overtime charge included—for instance, you have no knowledge whether it would include a trip from Mr. Voehl's house to his brother-in-law's house and back again and then on to the warehouse, or not?

A. That is perfectly true. We have no time clock on the automobile and we still have none.

Q. As a matter of fact, Mr. Voehl's duties were principally concerned, were they not, to seeing that your 24-hour service to homes was kept up?

A. No, I think not. I have so stated otherwise.

Q. The reason you put Mr. Voehl a telephone in at your expense was to make him available so calls coming in for refrigerating service could be promptly handled on your 24-hour a day service?

A. That is correct.

Q. So his duties principally were concerned with keeping up the prestige of the service to the home?

A. That is an incorrect assumption.

Q. Outside of the fact he also saw to the uncrating and storage of the refrigerators in the warehouse which duties are only incidental to the others?

A. Without this going on the record, sir, I might say [fol. 32] that one of the troubles I had with Voehl was that he always insisted on doing too damned much work himself. He was one of those fellows who pitched in and tore a crate to pieces and piled the lumber up. My principal trouble with Voehl was always instead of making others do the work he would pitch in and do it. It is valuable to have this disposition, but sometimes it is not the right way to organize. That is one of the troubles that I always had with him: he insisted on doing a lot of work himself.

Q. You had to depend absolutely on what Voehl turned in on the question of overtime?

A. I not only—I prefer to have you say that I did depend on him.

Q. Well, you did depend actually on Mr. Voehl for the determination as to the overtime?

A. That is right.

Mr. Myers: That is all I have to ask. Just a moment.

By Mr. Myers:

Q. Do you have any information of your own knowledge that Mr. Voehl had been working Sundays overtime?

A. I did.

Q. Prior to the date of the accident?

A. I did.

Q. Can you recall any Sunday on which he worked?

A. I cannot.

Q. How long ago do you think it was that he worked on Sunday, before the accident which took place on Sunday the 6th of April, according to the testimony here. Do you recall that Sunday and can you tell us what Sunday it was before that Sunday that he worked?

A. I do not know.

Q. Can you recall about how many Sundays there were when he worked?

A. I do not know. I might say there, Mr. Myers, that the one man who could have answered that question specifically for you unfortunately dropped dead last September. That was my assistant.

Mr. Myers: I would like to have permission to have furnished for the benefit of the record for the year prior

thereto, from the examination of the records—Mr. McCree can furnish us with it himself—the overtime charged for Mr. Voehl for any work he did on Sundays.

The Witness: I question whether we can furnish those records.

[fol. 33] By Mr. Myers:

Q. Is this kept as a matter of record?

A. I doubt very much if those are available for the full year.

Q. How about these (indicating some books)?

The Deputy Commissioner: What do you mean by "these"?

Mr. Myers: I want Mr. McCree to identify them.

The Deputy Commissioner: All right.

By Mr. Myers:

Q. I want to, Mr. McCree, have you identify these (handing documents to the witness)?

A. (After examining the documents.) These are the pencil memorandum-. These appear to be——

By the Deputy Commissioner:

Q. (Interposing.) Just describe them for the record.

A. These are pencil memorandums showing various expense items and overtime charges.

By Mr. Mendelson:

Q. Does that show all of the time that he put in outside of his regular hours?

A. There again I am unable to say definitely. He was trusted. We trusted him.

The Deputy Commissioner: Let me see them.

(The documents in question were then handed to and examined by the Deputy Commissioner.)

Mr. Mendelson: I object to their admission in evidence. That is not a complete list.

Mr. Myers: We will ask Mr. McCree to furnish it.

The Witness: I have no way of furnishing it.

By Mr. Myers:

Q. Do you know of your own knowledge that these slips are kept on file in your company for the purpose of keeping a record of the overtime?

A. I do not. To the best of my knowledge and belief these slips simply are put there as a memorandum to justify [fol. 34] cash disbursements. After each periodical audit, it is my understanding they are destroyed. That is subject, however, to further correction.

Q. What is—what record is maintained by your company or is there, is an overtime charge record for a period of a year, a record by which the overtime paid can be shown?

A. I do not think there is any, off-hand. I will check and find out. I get a statement each month for the amount of expense of each department and we check back on it.

Q. But the individual records of the employees fail to show the amount of overtime allowed or paid them during the period in which they are employed by your company? Is that right?

A. I think we can give you a record of the total amount paid, but whether we can tell you that such and such an amount was paid—in fact I know we can give you the record of the total amount paid, but whether I can say that this represents overtime or this represents something else, I would hesitate to say. I do not know and I do not think anyone knows.

Q. But these are your company's records?

A. Yes, but they are so meagre and the dates—well, I would not be able to say.

By the Deputy Commissioner:

Q. Is that the overtime slip for the week ending on the period stated there (handing a slip to the witness)?

A. (After examining the slip.) Yes.

Q. And the actual dates are not on there of what date they refer to?

A. These dates are down here, sir, and knowing the character of men that are over there I would hate to say definitely that this was so, or to say that that was so, or that they were for a certain day in that period. I would not swear that that was a correct statement. I will say, though, that that is a correct statement of the amount of money paid.

By Mr. Myers:

Q. But as to the days for which the money was paid, you have no idea?

A. I would not say that I have no idea, but I cannot say definitely what days they are.

Q. But you would not be able to tell me what days in that week he worked overtime (indicating the slip)?

A. No.

[fol. 35] Mr. Myers: I still want to request that Mr. McCree be asked to furnish from the records of his company the overtime that Mr. Voehl was paid for at least a period of six months prior to the date of the accident, the purpose of which is for the basis of showing that Mr. Voehl did not work on Sundays.

Mr. Mendelson: May it please your Honor, that is immaterial here because the evidence shows that he had the right to work on Sunday. Assuming that he did not work on any other Sunday he did have the right to work on that Sunday or on any Sunday. Mr. McCree testified that he had the right to go there Sunday if he wanted to.

The Deputy Commissioner: I think we are entitled to know that he did work on Sunday.

The Witness: Are you going to give me a written request for that? Will you give me a written request of what you want?

The Deputy Commissioner: You are interested more in Sundays.

Mr. Myers: Yes.

The Deputy Commissioner: Just the Sundays, then, for the six months prior.

The Witness: I doubt if I can give you that.

The Deputy Commissioner: Do the best you can.

Mr. Mendelson: That would not affect his practice, if your Honor please.

Mr. Myers: I think that is all I have to ask.

The Deputy Commissioner: I want to ask Mr. McCree a few questions. Are you through?

Mr. Mendelson: Yes.

By the Deputy Commissioner:

Q. You testified that Mr. Voehl's duties were home service in addition to work at the warehouse?

A. That is right.

Q. And I believe you testified that the telephone was put in his house so that when any special calls came in for home service, outside of hours, they could be reported to him at his home?

A. That is right.

Q. Now, when he made these particular calls were those the ones particularly that he was allowed mileage for in his car?

A. Those were part of the times that he was allowed mileage.

[fol. 36] Q. Part of the times?

A. Yes. Any work that he did outside of office hours that necessitated the use of his car he was paid mileage for.

Q. What was the arrangement?

A. Or, as a matter of fact, within hours.

Q. What was the arrangement in regard to his going out on special calls?

A. That he use his own car.

Q. He used his own car?

A. Yes, he used his own car.

Q. Outside of these calls, was it his particular business to report to the shop?

A. I do not follow your question.

Q. Did you expect him to report to the shop at a certain time in the morning?

A. Oh, yes.

Q. And that was 7 o'clock?

A. No. That was 7:30 o'clock.

Q. 7:30 o'clock in the morning he was required to report at the shop?

A. Yes.

Q. Did you furnish transportation to all your employees to and from the office?

A. No, we did not furnish transportation to any of our employees on week days.

Q. To and from your office?

A. To and from the office, no.

Q. What do you mean by "week days"?

A. In other words, Monday morning to Saturday morning and Monday to Friday evening and on Saturday afternoon returning home or wherever they wished to go—we did not furnish transportation for that.

Q. Did you furnish Mr. Voehl with transportation for that?

A. No.

Q. Did you furnish transportation if they had occasion to come down on Sunday for any particular purpose?

A. Yes, we furnish transportation for that. We allowed that in on their mileage. They understood that — they were called out or if it was necessary for them to do any work on Sunday outside of office that we expected to pay them from the time they left the house until the time they returned.

(The witness thereupon was excused and retired temporarily from the witness stand.)

The Deputy Commissioner: I want to ask Mr. Finnigan another question.

Thereupon HUGH L. FINNIGAN was recalled as a witness and upon examination testified as follows:

[fol. 37] By the Deputy Commissioner:

Q. When you started out on Sunday morning with Mr. Voehl, you started to get the ashes, you stated, and then you were going back home and going on another errand that afternoon. Is that right?

A. Mr. Voehl said he would not have bothered me if it was not for the ashes. What else he had to do he would have done himself.

Q. Did he say that he was going some other place that afternoon and not going to do the other work?

A. No. He went there specifically to straighten up the warehouse and bring the ashes back home when he came back.

Q. Where was he going to put them?

A. He was going to dump them in the road on A Street, in front of the house.

Q. Is that the road you travel on?

A. Yes.

Q. What was your purpose in dumping the ashes on A Street?

A. He was trying to kill the mud in the road. It is a street that the county does not seem to want to do anything to it, and that is the way he took care of it.

Q. Then, to your knowledge, he did not have any agreement with the county to haul the ashes in?

A. No.

Q. He just did that as a matter of his own convenience?

A. As a community effort; they practically built the street there themselves.

The Deputy Commissioner: That is all.

(The witness thereupon was excused and retired from the witness stand.)

Mr. Myers: I would like to ask Mr. McCree another question.

The Deputy Commissioner: All right.

Thereupon C. Leslie McCree was recalled to the witness stand and upon examination testified as follows:

Cross-examination (resumed).

By Mr. Myers:

Q. Can you name anything else that Mr. Voehl used to use his — for other than the service, that is going to see what was wrong with refrigerators that you had installed in people's homes?

A. Oh, yes; he used his car for emergency service on the [fol. 38] lighting plant or taking parts down to the lighting plant.

Q. All of that was in connection with the lighting plant?

A. Yes. His employment prior to the time he was shifted over to the refrigeration department or in connection with that, was in connection with the lighting plant, and he was about the only one left that knew anything very much about them and if a man had his lighting plant down and it was necessary to go to the warehouse and get a part, he would go down there and get it for him and then fix up his lighting system and water.

Q. That is another instance of servicing, servicing the lighting plants?

A. Yes, sir, whatever you might call it.

Mr. Myers: All right.

Redirect examination.

By Mr. Mendelson:

Q. You spoke before about the number of men under Mr. Voehl. Did that depend on Mr. Voehl?
A. You mean the number of men?
Q. Yes, working under Mr. Voehl?
A. You mean did he have charge of hiring and firing?
Q. Yes? A. He did with the advice and the approval of Mr. Stoody.

Mr. Myers: I think he should insert in the record that Mr. Stoody was assistant and the date when he died.

By Mr. Myers:

Q. When did he die?
A. September 8th, 1930, or September 9th.

By Mr. Mendelson:

Q. Mr. McCree, what facilities did you provide for the removal of ashes?
A. We provided no facilities for the removal of ashes ourselves. That was provided by the building division, that is it was outside of the refrigerator division, but it was naturally in the same category as the removal of other trash.
Q. And it was satisfactory with your department to take care of that end of it?
A. Sure; if they wanted to take them away they could [fol. 39] take them away. It did not hurt us any.
Q. And the charge was perfectly permissible to be placed in your department for the time spent on that?
A. I do not think he spent time on the removal of ashes when he was on his way home.

The Deputy Commissioner: Was he on his way home or down to the plant?
Mr. Mendelson: He is speaking in general of all the employees if they took the ashes home.

The Witness: If they wanted to gather up a couple of cans of ashes and put them in the back of the car it saved us something that we did not have to pay out. But, we weren't any more interested in that than anything else they might have taken home.

By Mr. Mendelson:

Q. If it was necessary to remove the ashes, state whether the employees did not do that in order to clean up the plant?

A. I want you to understand that, particularly, the removal of ashes was not under Mr. Voehl's jurisdiction. That is, Mr. Voehl was not charged with the responsibility of removal of ashes. There is another individual charged with that, and that is Mr. Fields. He worked with the company. Mr. Voehl was charged with the removal of lumber, and that is a product of our own department, that is the refrigerating or refrigerator waste.

Q. If he put in any overtime charge for the removal of ashes, would you have honored that?

A. I would not have honored any overtime charge for the removal of ashes solely, but if he was on his way home, after having performed work for us and he took the ashes with him, it was perfectly agreeable to me.

Q. Were the details of these slips that we have been referring to actually known to you?

A. No.

Q. You honored them as they were presented?

A. Yes.

Mr. Mendelson: That is all.

[fol. 40] Recross-examination.

By Mr. Myers:

Q. Then there was nothing in the past then, no basis at all for paying Mr. Voehl for removing those ashes?

A. Well, no.

Q. And there was nothing in the past that would prevent Mr. Voehl from charging you for the removal of the ashes and putting in overtime for them and you would pay it?

A. That is perfectly true. And Mr. Voehl could have sent another employee down to do the same work and you

would not pay that because Mr. Voehl was the only one who had access to the warehouse.

Q. Suppose he gave the key to another man?

A. The watchman would not have let him use the key.

Q. You say the watchman would not have let him use the key?

A. Yes.

Q. An employee of your company?

A. Mr. Voehl was the only man who had access to the warehouse. Mr. Voehl was the only man, and Mr. Ross—they were the only men.

Q. Did not Mr. Ross work under Mr. Voehl?

A. He was directly under him.

Q. And Mr. Ross could have been sent down and done that work?

A. Yes, and he would have collected overtime for it.

By Mr. Mendelson:

Q. Do I understand that Mr. Voehl was in the habit of working in other departments of the National Electric-Company?

A. No. That is an incorrect assumption. I say he used to work in the other departments and, in order to still satisfy the customers if it was necessary for him to go out and do a job he did it. As a matter of fact, a considerable portion of his overtime work in the course of the year would be taking his Sunday and going down in southern Maryland and doing an overtime job for the company in the repair of a light plant.

By Mr. Myers:

Q. Do you know that of your own knowledge?

A. I do.

Mr. Mendelson: That is all.

[fol. 41] By the Deputy Commissioner:

Q. Do you know whether Mr. Voehl had been instructed to go back to the plant on this day, on Sunday, the day of the injury?

A. I know this: I know that the warehouse for the two or three days prior to Sunday was in a badly littered condition.

Mr. Myers: I again object to that same question. He has gone through that matter and he said he did not know anything about the day in question.

The Deputy Commissioner: That is the day. He is stating that now.

By the Deputy Commissioner:

Q. Do you know whether or not he had customarily gone down on Sunday or about how many Sundays he had gone down?

A. I do not. I know that Mr. Voehl did the job and if it was necessary for him to work evenings he worked evenings and if it was necessary for him to work Sundays he worked Sundays and, when a man does his job, I ask nothing further of him. All I ask is results and as long as he does it, that is the end of it.

Q. These other men got through their work and started for home so that their days' work usually ended when they left the plant. Is that true?

A. No, many times if Mr. Voehl——

Q. (Interposing.) I am not talking about Mr. Voehl. I am talking about the other men.

A. If we relayed a call to Mr. Voehl, Mr. Voehl would use his judgment as to how to handle it.

Q. I am talking about the men who worked regularly at the plant.

A. I am speaking about the same thing. For example, we had a service call——

Q. (Interposing.) You are bringing something else into the question. I am asking you about nothing except the other men. When the other men quit their day's work and took ashes home, did you pay for the extra time because they had the ashes with them?

A. Oh, no, no. No.

By Mr. Mendelson:

Q. Was not the removal of the ashes that his Honor is speaking of, was that not merely a matter of convenience [fol. 42] for the employees if they removed them?

A. It was a convenience for the employees solely.

Mr. Mendelson: That is all.

(The witness thereupon was excused and retired from the witness stand.)

Thereupon Dr. R. Apgar was called as a witness for and on behalf of the claimant and, having been previously duly sworn by the Deputy Commissioner, was examined and testified as follows:

Direct examination.

By the Deputy Commissioner:

Q. What is your name, please, Doctor?
A. Dr. R. Apgar.

The Deputy Commissioner: Now, I wonder how much we have to go into the medical end of the evidence here to prove that this man was injured and the nature of the injury?
Mr. Myers: I do not know a thing about the injury.

By the Deputy Commissioner:

Q. Dr. Apgar, what is your address, please?
A. 6119 D Street, Northeast.
Q. You are a registered physician in the District of Columbia?
A. In the District of Columbia and Maryland.
Q. Of what school, Doctor, are you a graduate and in what year did you graduate?
A. University College of Medicine, Richmond, Virginia.
Q. The University of Virginia?
A. Yes.

The Deputy Commissioner: Are there any other questions that you want to ask with respect to qualifying the doctor, gentlemen?
If not, you may proceed with your examination.

By Mr. Mendelson:

Q. Did you attend in a professional capacity, Doctor, Mr. Karl F. Voehl, since on or about the 6th of April?
A. Yes, sir.
Q. 1930?
A. Yes, sir.
[fol. 43] Q. What was the occasion?
A. He was in the hospital and I was called to the hospital to see him. He had sustained a fracture of the spine.

By the Deputy Commissioner:

Q. Who called you in, Doctor?
A. I beg your pardon?
Q. Who called you in?
A. The family, Mrs. Voehl.
Q. Go ahead.
A. And the condition to me—Dr. Rodgers and Dr. Lee Custis Hall; he is the one who operated on him—I saw him one day on the 5th, and the next day Dr. Hall thought it prudent to operate on him and he, with the assistance of myself and Dr. Rodgers performed the operation on the spine. He had three or four of these vertebra- kind of mixed up and jammed.
Q. Which ones?
A. In the dorsal region.
Q. Which one?
A. I do not just recall now. It seems to me it was the second, third and fourth, and one of these vertebræ was pushed forward or backward, was pushed backward—no, it was pushed forward, and that is what did the damage to the cord, the spinal cord, producing this paralysis which he sustained and still has, it still remains.
Q. What paralysis is that?
A. Paralysis of the lower extremities; paralysis from the waist down.
Q. Affecting the extremities or the intestinal organs?
A. No, the lower extremities; somewhat too, his bladder and intestines. Anything below this vertebra (indicating) was paralyzed.

By Mr. Mendelson:

Q. How long, Doctor, do you think that that condition will exist?
A. I don't know—it is a question that I cannot answer from my observation. Prior to this when talking to the other physicians and surgeons I would say that is a question. It is kind of doubtful now if he ever will regain his power there or activity of the lower extremities.
Q. Would you consider that a permanent disability?

Mr. Myers: Don't you think we ought to ask the doctor a few questions as to his experience in this matter?

The Deputy Commissioner: Let him answer this question and then you can ask him others if it is necessary.
[fol. 44] The Witness: What was the question?

The Reporter (reading): "Q. Would you consider that a permanent disability?"

A. I would consider it a permanent disability.

By Mr. Mendelson:

Q. Have you had any practice along this line before?
A. Well, I have seen people paralyzed and, gone this long, this duration, they do not generally recover very rapidly.

By the Deputy Commissioner:

Q. The man is still disabled at this time?
A. Yes.

The Deputy Commissioner: That matter can be settled at a later date, Mr. Myers, if it is necessary.
Mr. Myers: All right.
The Witness: He is still disabled and my talk with the other physicians and surgeons, well, they all agree it is a question whether he will regain his power.
The Deputy Commissioner: You are not denying he is disabled at this time?
Mr. Myers: Not if the doctors say so.
The Deputy Commissioner: That question can be settled later.
The Witness: I recently had Dr. J. P. Shearer, Naval surgeon at this time, to look at the man and he came to the same conclusion. He came to see him because he had contracted erysipilis. I called him——

By the Deputy Commissioner:

Q. (Interposing.) How long ago?
A. I called him in; I thought he would die. That was about a month ago. Where he got this from I don't know.

The Deputy Commissioner: I don't think we need go any further at this time.

(Thereupon the instant hearing was concluded.)

I hereby certify that the foregoing is a complete and accurate transcript of my shorthand report of the testimony and statements, etc., presented at the described hearing.

[Name illegible.] Official Reporter.

[fol. 45] CLAIMANT'S EXHIBIT No. 1

Form DCCA-303

H. S. Middlemiss

Leave this space blank. Case No.: 322-33. Insurance Carrier's No.: 27.

District of Columbia Workmen's Compensation Act.

Office of Deputy Commissioner, Washington, D. C.

Employee's Claim for Compensation

(To be filed with the Deputy Commissioner in accordance with sections 13 and 19 of the Longshoremen's Act.)

Injured Person:

1. Name of employee: Karl F. Voehl. Employee's check No.: 140.
2. Address: Street and No.: 2nd & A Sts.; City or town: Seat Pleasant, Md.
3. Sex: Male. Age: 39. Married, single, widowed: Married.
4. Do you speak English? Yes. Nationality: American.
5. State regular occupation: Service Manager.
6. What were you doing when injured? Driving to place of employment.
7. (a) Wages or average earnings per day: $—. (Include overtime, board, rent, and other allowances.) (b) Per week: $45.00. (c) Were you employed elsewhere during week in which you were injured? No. (d) If so, state where and when: ——.

8. Were you paid full wages for day of accident? No.

Employer:

9. Employer: National Electrical Supply Company.
10. Office address: 1328 N. Y. Ave., N. W.
11 Nature of business: Electrical Supply Co. Branch: ——.

[fol. 46] The Injury:

12. Place where injury occurred: 53rd & Central Ave., N. W. (Give place, and name of vessel.)
13. Name of foreman: Mr. Stoody.
14. Date of accident or first illness: The 6th day of April, 1930, at 8:30 o'clock A. M.
15. How did accident happen or how was occupational disease caused? Automobile broke down.

Nature and Extent of Injury:

16. State fully nature of injury or occupational disease: Automobile injured driver (personally).
17. On what date did you stop work because of injury? April 6, 1930.
18. Have you returned to work? (Yes or No.) No. If "yes," on what date? ——.
19. Does injury keep you from work? (Yes or No.) Yes.
20. Have you done any work in period of disability? No.
21. Have you received any wages since injury? Yes. If so, from and to what date? April 6, 1930, until Sept. 1, 1930.
22. Has injury resulted in amputation? No. If so, describe same: ——.
23. Did you request your employer to provide medical attendance? Yes. Has he done so? Yes.
24. Attending physician: Name: Dr. Raymond Apgar. Address: 6113 D St., N. E.
25. Hospital: Name: Casualty. Address: ——.

Notice:

26. Have you given your employer notice of injury? (Yes or No.) Yes. When? Apr. 6, 1930.
27. If such notice was given, to whom? Mr. Stoody.
28. Was it given orally or in writing? Orally.

I hereby present my claim to the Deputy Commissioner for compensation for disability resulting from an injury arising out of and in the course of my employment and not occasioned solely by intoxication, or by my willful intention, and in support of it I make the foregoing statement of facts.

(Signed by) Karl F. Voehl, Claimant.

[fol. 47] Mail address: Box 804 Seat Pleasant, Md.
Dated October 7, 1930.

(Pursuant to instructions of the Deputy Commissioner, the following statement of the Claimant herein is included as part of the transcript of testimony in this case.)

STATEMENT OF CLAIMANT, KARL F. VOEHL, DATED OCTOBER 9, 1930

In reading over the statement I gave to the insurance agent on May the 14th, 1930, I found the same to be incomplete and am therefore adding the following in order to more fully explain the same.

My working hours during the winter months were from 7:30 A. M. to 5:30 P. M., while during the summer months my hours were supposed to be from 7:30 A. M. to 5:00 P. M., while 1:00 was the quitting time on Saturdays.

My employment was confined to the refrigeration department and I had charge of the receiving, delivery and warehousing of the refrigerators handled. In other words, upon the receipt of a refrigerator I would have to uncrate and store it away in its proper place and then prepare it again for delivery to a customer when sold.

In addition to the above, I took care of the special service rendered to the purchasers of refrigerators, and was always subject to call from my home to render such service. The company (Nat'l Electrical) installed a telephone in my home for just such service.

In conjunction with my work about the building, I had to keep the place clean, free and clear of all trash, crating, small timber and paper, accumulating chiefly from the handling of the refrigerators. I had eight men to take care

of the work assigned to me. Two white and two colored men were put on the delivery end of the work while the other 2 white and 2 colored men were for miscellaneous work about the plant. If I saw fit to get more help I would go to 5th and L Sts., N. W., where I could pick up more men.

Although I should have gotten off at 1:00 P. M. on Saturdays, I generally got off about five o'clock because I wanted to get everything ready for the beginning of the following week. There would often be quite an accumulation of trash [fol. 48] and crating on Saturday because of a gradual accumulation over the entire week end because of the fire hazards. I very often could not get everything done by remaining over late on Saturdays, and would have to come down on Sundays to finish cleaning up. During any period of excessive business I had to come down quite often on Sunday to clean up. I did not have to get special permission nor be ordered specially, to come down on Sundays.

My salary prior to January the first, 1930, was $40.00 per week but was increased to $42.50 since then, I was paid (5) five cents per mile for the use of my machine on their business and was paid 75¢ per hour for every hour of extra time I put in for them after my regular working hours at the building. My mileage and time was computed from my home until I returned home. Payment of mileage was not confined, nor was extra time confined, to ordered calls to customers' homes, but also on errands that I myself voluntarily went on without their special authority. Whenever I felt it necessary to make a special trip to the building, as on the day of the accident I was paid for the mileage, at 5¢ per mile from my home to the building and back to my home and was paid 75¢ per hour for the time I put in for the company, which was figured from the time I left home until I returned home. I did not have to receive special authority from my foreman, Mr. Stoody, to go to the building. I could exercise my own discretion as to the necessity of the trip. I could have even used the trucks of the company when I desired.

I took care of the building in accordance with the general order I had from Mr. McCrea, the general manager of the refrigeration department, that trash must not be allowed

to accumulate. It was in carrying out this order that I governed my actions. The manager would inspect the warehouse every Monday morning, in order to see that it was free of all trash. I naturally did my utmost to have the building clean for inspection. It was unusually busy at the building at about the time I sustained my accident as we had to handle about 20 to 30 refrigerators per day. This of course caused the trash to accumulate faster, making it necessary for me to come down to the building the Sunday of the accident. The crating of about 20 refrigerators would make a truck load of timber while 3 large boxes of loose trash would fill a truck.

[fol. 49] I would dispose of the trash, ashes and timbers either on the dump, or at the homes of the employees who could use it, or at my own home. It made no difference to my employer where I would dispose of it, as long as I rid the building of it.

(Signed) Karl F. Voehl.

Witness: (Signed) Amos B. Cole.

October 9th, 1930.

I agree that this statement of the employee shall be introduced into evidence in place of his examination orally.

(Signed) Frank H. Myers.

12/17/30.

(Pursuant to instructions of the Deputy Commissioner, the following letter of the National Electrical Supply Company, the Employer herein, is included as part of the transcript of testimony in this case.)

Letterhead of National Electrical Supply Co., Washington, D. C.

December 19, 1930.

United States Compensation Commission, Investment Building, Washington, D. C.

GENTLEMEN: This letter is written in response to your request for a statement of the payments for overtime work and mileage made to Mr. Karl F. Voehl for the six months prior to April 6, 1930, and for a longer period if possible.

On investigation the writer finds that it has been the practice of this Company to destroy miscellaneous records after a period of one year to make room for subsequent records of like character. For this reason we find that the [fol. 50] records for December, 1929, and months prior thereto, have been destroyed.

Mr. Voehl, in his capacity as Product- Manager, maintained a petty cash fund of approximately $15.00, from which he made payments to employees for overtime work. These payments included those to himself for overtime. It was then his custom to replenish the petty cash fund for these payments by submitting a memorandum voucher to the office whenever his fund had been depleted to such an extent as to so warrant. To give you definite and accurate information regarding the dates, amounts, etc., of all the overtime put in by Mr. Voehl is therefore difficult.

Based on a study of our entire operation for the first three months of 1930, and supported by our records and other facts, we are able to give you information of an exactly parallel instance to that of April 6th which occurred on Sunday, February 2, 1930.

On Sunday, February 2, 1930, Mr. Voehl came into the warehouse, entirely without specific instructions, for the purpose of

(1) arranging to remove General Electric Refrigerator exhibit from the Washington Auditorium because of the conclusion of the automobile show;

(2) to generally arrange and straighten up the warehouse;

(3) for the taking of an accurate physical inventory of stock on hand at that date.

On February 3, 1930, we honored his request for mileage covering this trip in the amount of 20 miles at 5¢ per mile, or $1.00, and under date of February 6, 1930, we paid him the sum of $11.00 to replenish his petty cash fund. Part of the memorandum given us to cover this disbursement of $11.00 shows a payment of $2.25 in connection with the removal of the automobile show exhibit.

Mr. Voehl performed this overtime work on Sunday, February 2nd, 1930, without specific authority from his

superiors, in the normal discharge of his duties, and was paid therefor as being a proper charge against this Company.

It is our belief that were the records of our busy season, that is the period from April 1st to August 1st, available [fol. 51] they would show a number of similar instances, all exactly parallel to the one specifically mentioned above.

Very truly yours, National Electrical Supply Company. (Signed) C. L. McCrea, Electric Refrigeration Department. CLM/ACH.

Subscribed and sworn to before me this 19th day of December, 1930. Chas. O. Reed. (Notary Seal.)

PLAINTIFF'S EXHIBIT NO. 3 TO BILL OF COMPLAINT

United States Employees' Compensation Commission, District of Columbia Compensation District

52413

In the Matter of the Claim for Compensation under the District of Columbia Workmen's Compensation Act

KARL F. VOEHL, Claimant,

vs.

NATIONAL ELECTRIC- SUPPLY COMPANY, Employer; Indemnity Insurance Company of North America, Insurance Carrier

Compensation Order—Award of Compensation

Case No. 322-33

Such investigation in respect to the above-entitled claim having been made as is considered necessary, and a hearing having been duly held in conformity with law, the Deputy Commissioner makes the following

Findings of Fact

That on the sixth day of April, 1930, Karl F. Voehl, the claimant above named, was in the employ of the employer

above named at 1328 New York Avenue, N. W., Washington, District of Columbia; that the employer was subject to the provisions of an Act of Congress, approved May 17, 1928, [fol. 52] entitled "An Act to provide compensation for disability or death resulting from the injury to employees in certain employments in the District of Columbia and for other purposes"; that the liability of the employer for compensation under the said Act was insured by the Indemnity Insurance Company of North America; that on said date the claimant herein, while enroute to the plant of the employer above named for the purpose of cleaning the warehouse in the Refrigerating Department, sustained personal injury which arose out of and occurred in the course of his employment and resulted in his disability; that the claimant's duties as manager of the said warehouse of the Refrigerating Department required that he be on duty at the warehouse from 7:30 in the morning until 5:00 o'clock in the evening, working 5½ days per week, and, in addition, to be and remain available upon telephone call for his service at all times of day and night; that the employer had placed in the claimant's home a telephone so that he could be called at any time to service refrigerators which had been sold by the employer, and to do other work, such as delivering electrical supplies for the employer with his own personal car; that several employees of the employer under the claimant's direction were held in readiness to be sent by him on any special job that might arise during business hours or during any of the twenty-four hours of the day; that the claimant herein was entitled to transportation for the use of his own car paid by the employer on a mileage basis for any special calls which he might be required to make, or service which he might be called upon to perform; that, whenever the claimant deemed it necessary to make a special trip to the employer's place of business, he was paid mileage at the rate of five cents per mile from his home to the said place of business, and was also paid at the rate of seventy-five cents per hour for the time he worked, which included the time he left his home to the time he returned thereto; that the claimant herein travelled from his home to the office and back in his own personal car during the working days of the week and was not allowed transportation for such travel; that the employer testified that the claimant was entitled to remuneration for the use of his car at

any time he might be called upon for service, or whenever in his own judgment he considered it necessary to use his own car for any special occasions other than traveling back [fol. 53] and forth from his home on week days; that on Sunday, April 6, 1930, the claimant determined that it was necessary that he should go to the warehouse of the employer to clean up certain trash that was in and around the building, part of which duty he was held entirely responsible for and part of which was a matter of his own discretion; that the object of his trip on that date was to clean up the warehouse, which was littered with trash from unpacking cases to have it in readiness for regular Monday morning inspection; that, in addition to this duty, the claimant was expecting to haul home a load of ashes to be dumped in the public highway in front of his house, and to take away some of the trash which was of necessity to be removed from the building; that the employer also testified that the claimant herein was entitled to compensation for his time from the time he left his home until he returned, and further stated that while the claimant had no specific authority to go to the warehouse on this occasion, he had done so on previous occasions and had been paid overtime and mileage for the service; that while the claimant herein was employed in these various capacities and was in pursuance of his duties as above referred to, he was driving his own car from his home enroute to the said place of employment on Sunday, April 6, 1930, when the car skidded in some soft gravel and overturned at 52nd and Central Avenue, throwing the claimant herein to the ground and injuring him; that said injury was described by the attending physician as a fracture of the spine; that due notice of the injury was given to the employer and to the Deputy Commissioner; that the claimant is entitled to medical treatment in accordance with Section 7 of the said Act; that the wages of the claimant at the time of the injury were $45.00 per week, which is in excess of the maximum amount upon which compensation is computed under the Act, and he is, therefore, entitled to compensation at the rate of $25.00 per week; that as a result of the said injury, the claimant suffered temporary total disability beginning April 6, 1930; that said temporary total disability still exists; that compensation from April 6, 1930, to January 3, 1931, both dates inclusive, a period of 39 weeks, at the rate

of $25.00 per week amounts to $975.00; that Attorney Israel J. Mendelson rendered legal services for the claimant [fol. 54] herein and for such services is entitled to a reasonable fee approved in the amount of $50.00.

Upon the foregoing facts, the Deputy Commissioner makes the following

Award

That the employer, National Electric- Supply Company, and the insurance carrier, Indemnity Insurance Company of North America, shall pay to the claimant, compensation for temporary total disability, beginning April 6, 1930, to January 3, 1931, both dates inclusive, a period of 39 weeks, at $25.00 per week, amounting to $975.00, which amount is due and shall be paid forthwith; and shall continue to pay compensation beginning January 4, 1931, at $25.00 per week, payable every two weeks, until further order of the Deputy Commissioner; and shall pay to Attorney Israel J. Mendelson for legal services rendered in behalf of the claimant, the sum of $50.00, which amount shall constitute a lien upon and be paid out of the unpaid installments of compensation; and shall provide such medical and hospital treatment in accordance with Section 7 of the Act as the nature of the injury and the process of recovery may require.

Given under my hand at Washington, D. C. this eighth day of January, 1931.

R. J. Hoage, Deputy Commissioner, District of Columbia Compensation Act.

Proof of Service

I hereby certify that a copy of the foregoing compensation order was sent by registered mail to the claimant, the employer, the insurance carrier, attorney — the insurance carrier and attorney for claimant, at the last known address of each as follows:

Name	Address
Mr. Karl F. Voehl.....	Seat Pleasant, Maryland.
National Electric- Supply Company	1330 New York Avenue N. W., Washington, D. C.

Name	Address
[fol. 55]	
Indemnity Insurance Co. of N. A.	C/o Ralph W. Lee & Co., 1508 L St. N. W., Wash., D. C.
Israel J. Mendelson, Attorney at Law.	Colorado Bldg., Washington, D. C.
Frank H. Myers, Attorney at Law.	Hibbs Building, Washington, D. C.

R. J. HOAGE, Deputy Commissioner.

Mailed January 8, 1931.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

ORDER FOR LEAVE TO INTERVENE—Filed February 13, 1931

* * * * * * *

Upon consideration of the motion filed herein and the consent of all parties in interest by their respective attorneys, it is by the Court this 13th day of February, 1931,

Ordered, that Karl F. Voehl, the claimant in Compensation Case #322-33, be and he hereby is granted leave to intervene in the above entitled cause, as party defendant.

Jennings Bailey, Justice.

No objection to above order.

McKenney, Flannery & Craighill, by G. B. Craighill, Tebbs & Myers, Attorneys for Plaintiff. Leo A. Rover, U. S. Attorney, Attorney for Defendant Hoage.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

MOTION TO DISMISS BILL OF COMPLAINT—Filed February 24, 1931

* * * * * * *

Now comes the Defendant Robert J. Hoage, Deputy Commissioner, United States Employees' Compensation Com-

mission, by his attorney, and moves this Honorable Court [fol. 56] to dismiss the Bill of Complaint filed herein for the following reasons; to wit:

1. That the Bill of Complaint filed herein does not entitle the Plaintiff to any relief in law or equity.

2. That the Bill of Complaint contemplates that this Honorable Court will weigh the evidence in this matter to arrive at a conclusion other than that found by the Deputy Commissioner in the face of substantial evidence to support his findings of fact as shown by the transcript of testimony annexed to the petition herein.

3. That the findings and award of the Defendant Deputy Commissioner as shown in the compensation order annexed to petitioner's Bill of Complaint are in accordance with law.

4. That the findings of the Defendant that the injuries to the employee mentioned in the Bill of Complaint arose out of and occurred in the course of his employment are supported by the evidence.

5. For such other good and sufficient reasons as may be shown.

Leo A. Rover, United States Attorney, Attorney for Defendant. John W. Fihelly, Asst. U. S. Atty.

In Supreme Court of District of Columbia

Memorandum Opinion—Filed April 7, 1931

* * * * * * *

I am of the opinion that the motion to dismiss should be sustained. Accordingly, that an order to such effect will be signed when presented in proper form.

Dated April 6, 1931.

James M. Proctor, Justice.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

FINAL DECREE—Filed April 14, 1931

* * * * * * *

This cause came on to be heard upon the plaintiff's bill of complaint and the defendants' motion to dismiss the [fol. 57] same, and argument having been heard, thereupon upon consideration thereof, it is, by the Court, this 14th day of April, A. D. 1931,

Adjudged, ordered and decreed that the said bill of complaint be and the same is hereby dismissed; and it is further

Adjudged, ordered and decreed that the costs be taxed against and payable by the said plaintiff.

James M. Proctor, Justice.

No objections as to form.

G. Bowdoin Craighill, Frank H. Myers, Attorneys for Plaintiff.

From the foregoing decree, the Plaintiff in open court notes an appeal to the Court of Appeals D. C. this 14th day of April 1931 and the penalty of the bond on appeal is hereby fixed at $100 or a deposit of $50.00 in cash in lieu thereof.

James M. Proctor, Justice.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

MOTION TO STAY PAYMENTS OF COMPENSATION—Filed April 23, 1931

* * * * * * *

Now comes the plaintiff and moves the Court to allow a stay of the payments required to be made under the compensation order issued by the defendant under date of January 8, 1931, or any order supplemental thereto which may be issued by the defendant, until the final decision of the Court of Appeals in this cause, provided the plaintiff perfects and prosecutes such appeal in accordance with the Rules of this Court and of the Court of Appeals. As grounds for said motion, plaintiff says that unless said stay

be granted, the plaintiff and/or defendant Voehl's employer will suffer irreparable damage, as shown by the affidavit and memorandum hereto attached and hereby made a part hereof.

McKenney, Flannery & Craighill, by G. B. Craighill, Attorneys for Plaintiff.

[fol. 58] To Leo A. Rover, Esq., United States Attorney, attorney for defendant Hoage; Israel J. Mendelson, attorney for defendant Voehl:

Please take notice that the points to be submitted in support of this motion, and the authorities intended to be used are attached hereto. The rules of the above entitled court require, that if you oppose the granting of the above motion, you, or your counsel, shall within five days, from the date of service of a copy of this motion upon you, or such further time as the said court may grant, or, as the parties to this suit may agree upon, file in reply with the clerk of said court, a statement of the points and authorities upon which you rely, and serve a copy thereof upon counsel for the plaintiff.

McKenney, Flannery & Craighill, by G. B. Craighill, Attorneys for Plaintiff.

Service of copy of foregoing motion and attached papers is hereby acknowledged this 23d day of April, 1931.

Israel J. Mendelson, Attorney for Defendant Voehl.
Leo A. Rover, S., United States Attorney, Attorney for Defendant Hoage.

MEMORANDUM IN SUPPORT OF MOTION TO STAY PAYMENTS OF COMPENSATION

1. Plaintiff's bill of complaint was filed on or about February 5th, 1931, under the provisions of the Compensation Act of March 4, 1927, (44 Stats. L. 1424), which was made applicable to the District of Columbia by Act of Congress approved May 17, 1928, (45 Stats. L. 600), to enjoin enforcement of a compensation order made by the defendant under date of January 8, 1931, requiring the plaintiff to pay defendant Voehl forthwith compensation for tempo-

rary total disability, beginning April 6, 1930, to January 3, 1931, a period of 39 weeks, at $25 per week, amounting to $975, and to continue to pay compensation beginning [fol. 59] January 4, 1931, at $25 per week, payable every two weeks, until further order of defendant.

2. Section 21 of said Compensation Act provides:

"The payment of the amounts required by an award shall not be stayed pending final decision in any such proceeding unless upon application for an interlocutory injunction the court, on hearing, after not less than three days' notice to the parties in interest and the deputy commissioner, allows the stay of such payments, in whole or in part, where irreparable damage would otherwise ensue to the employer. The order of the court allowing any such stay shall contain a specific finding, based upon evidence submitted to the court and identified by reference thereto, that such irreparable damage would result to the employer, and specifying the nature of the damage."

3. Pending the hearing and decision by this Court, counsel for defendant Voehl agreed to make no effort to press for the payments required to be made by defendant under said compensation order, but upon the Court entering a final decree herein on April 14th, 1931, dismissing the bill, counsel for said defendant Voehl stated that he proposed to take steps to enforce such payments in the manner authorized by said Compensation Act, which provides for the entry of a supplemental order by the defendant and the entry of judgment thereon in this Court.

4. If such supplemental order and judgment should be entered and plaintiff and/or Voehl's employer should be compelled to pay same, and to continue to make said bi-weekly payments, or incur the 20% penalty provided for failure to make such payments when due, the plaintiff and/or Voehl's employer would suffer irreparable damage, in that, in the event the award should be ordered by the Court of Appeals to be set aside, the plaintiff and/or Voehl's employer would be unable to recover back the amount of such payments as shall have been made prior to such final decision, because the defendant Voehl is a non-resident of the District of Columbia, has no property in said District and only a small amount of personal effects

and a small equity in property located in Maryland, as more fully set forth in the affidavit hereto attached and made part hereof.

[fol. 60] 5. It is respectfully requested that this motion be referred to and considered by Mr. Justice Proctor, before whom the case was fully argued, or that an oral hearing be held on this application.

McKenney, Flannery & Craighill, by G. B. Craighill, Attorneys for Plaintiff.

Affidavit in Support of Motion to Stay Payments of Compensation

* * * * * * *

STATE OF PENNSYLVANIA,
City of Philadelphia, ss:

I, E. W. Miller, Vice-President, being first duly sworn, on oath depose and say that I am Vice-President of the Indemnity Insurance Company of North America, a corporation, the plaintiff in the above entitled cause, and I am authorized to make this affidavit on behalf of said plaintiff corporation; that said corporation has caused an investigation to be made concerning the defendant, Karl F. Voehl, and as a result thereof learned that said Voehl was and is a resident of Maryland and a non-resident of the District of Columbia; that he owns no property in the District of Columbia, and so far as plaintiff has been able to discover, said Voehl owns no property in Maryland except a small equity in the dwelling in which he resides and a small amount of personal effects; that affiant has read the motion and memorandum hereto attached and verily believes that the facts therein and herein stated are true and, if it should be finally decided that said Voehl is not entitled to compensation, that plaintiff will be unable to recover the payments which it shall have made to him.

E. W. Miller. E. M. B.

Subscribed and sworn to before me this 22nd day of April, 1931. Eleanor R. Bird, Notary Public. My commission expires March 9, 1935. (Notarial Seal.)

[fol. 61] In Supreme Court of District of Columbia

Order Overruling Motion to Stay Payments—Filed May 4, 1931

* * * * * * *

Upon consideration of the motion to stay payments of compensation filed herein April 23, 1931 by the plaintiff, and after argument by counsel for all the parties, it is, by the Court, this 4th day of May, A. D. 1931,

Ordered that the said motion to stay payments of compensation be and the same is hereby overruled.

James M. Proctor, Justice.

The plaintiff notes an exception to the foregoing order overruling its motion to stay payments of compensation.

James M. Proctor.

Memorandum as to Bond

May 4, 1931.—$50 deposited for Plaintiff in lieu of bond on appeal.

In Supreme Court of District of Columbia

Assignments of Error—Filed May 7, 1931

* * * * * * *

The plaintiff, Indemnity Insurance Company of North America, a corporation, having duly noted in open Court an appeal from the decree entered in the above entitled cause on April 14th, 1931, assigns the following errors in the record and proceedings in said cause:

1. The Court erred in dismissing the Bill of Complaint;

2. The Court erred in thereby holding that the award of the defendant, Robert J. Hoage, Deputy Commissioner, described in said Bill, was in accordance with law, and that said Voehl was entitled to compensation under the provisions of the Act of Congress approved March 4, 1927,

(44 Stats. L. 1424) as applied to the District of Columbia by Act of Congress approved May 17, 1928, (45 Stats. L. 600) known as the District of Columbia Workmen's Compensation Act;

[fol. 62] 3. The Court erred in thereby holding that the injury sustained by defendant Voehl arose out of and in the course of his employment;

4. The Court erred in denying the application of plaintiff for a stay of payments of compensation pending final decision of this cause.

McKenney, Flannery & Craighill, by G. B. Craighill, Attorneys for Plaintiff.

Service of the foregoing Assignments of Error, with receipt of a copy thereof, is acknowledged this 7th day of May, 1931.

Leo A. Rover, U. S. Attorney for District of Columbia, Attorney for Defendant, Robert J. Hoage, Deputy Commissioner. J. J. Wilson, Asst. U. S. Atty., D. C. Israel J. Mendelson, Attorney for Defendant Karl F. Voehl.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

DESIGNATION OF RECORD—Filed May 7, 1931

* * * * * * *

The Clerk of the Court will please prepare transcript of record on appeal in the above entitled cause and include therein the following:

1. Bill of Complaint, and all accompanying exhibits;

2. Order granting Karl F. Voehl leave to intervene;

3. Motion of defendant Hoage to dismiss Bill;

4. Memorandum opinion filed by Justice Proctor, April 7, 1931;

5. Final decree dismissing Bill, with notation of appeal, April 14, 1931;

6. Plaintiff's motion for stay of payments of compensation pending final decision, with memorandum and affidavit in support thereof;

[fol. 63] 7. Order overruling motion to stay payments of compensation with exception thereto;

8. Deposit of $50 in lieu of undertaking for costs on appeal, May 4, 1931;

9. Assignments of Error.

10. This designation.

McKenney, Flannery & Craighill, by G. B. Craighill, Attorneys for Plaintiff.

Service of the foregoing designation, with receipt of copy thereof, is acknowledged this — day of May, 1931.

Leo A. Rover, U. S. Attorney for District of Columbia, — for Defendant Robert J. Hoage, Deputy Commissioner. J. J. Wilson, Asst. U. S. Atty., D. C. Israel J. Mendelson, Attorney for Defendant Karl F. Voehl.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 64] Endorsed on cover: District of Columbia Supreme Court. No. 5435. Indemnity Insurance Company of North America, a corporation, appellant, vs. Robert J. Hoage, Deputy Commissioner for District of Columbia of the United States Employers' Compensation Commission, et al. Court of Appeals, District of Columbia. Filed June 30, 1931. Henry W. Hodges, Clerk.

[fol. 65] IN COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

No. 5435

INDEMNITY INSURANCE COMPANY OF NORTH AMERICA, a Corporation, Appellant,

vs.

ROBERT J. HOAGE, Deputy Commissioner for District of Columbia of the United States Employees' Compensation Commission, and Karl F. Voehl, Appellees

MOTION TO STAY PAYMENTS OF COMPENSATION—Filed July 8, 1931

Now comes the appellant and moves the Court to allow a stay of the payments required to be made under the compensation order issued by the appellee Hoage under date of January 8, 1931, or any order supplemental thereto which may be issued by the said appellee, until the final decision of this Court in this cause.

As grounds for said motion, appellant says that unless said stay be granted, appellee will suffer irreparable damage, as shown by the affidavit and memorandum hereto attached and hereby made a part hereof.

G. Bowdoin Craighill, Chas. B. Tebbs, Frank H. Myers, Attorneys for Appellant.

Service of a copy of above motion, affidavit and memorandum is acknowledged this 8th day of July, 1931.

Israel J. Mendelson, Leo A. Rover, by J. I. Richards, Asst., Attorneys for Appellees.

[fol. 66] MEMORANDUM IN SUPPORT OF MOTION TO STAY PAYMENTS OF COMPENSATION

1. The question involved on this appeal is whether appellee Voehl is entitled to compensation under the Workmen's Compensation Act for injuries sustained by him on April 6, 1930, as a result of his own automobile, which he was driving, turning over while he was on his way to the warehouse of his employer, National Electrical Supply

Company. The accident occurred on a Sunday, when Voehl was several miles from the warehouse, and appellant claims that he was not "on duty" and that the injuries did not arise out of or in the course of his employment.

2. Appellant's bill of complaint was filed in the Supreme Court of the District of Columbia on or about February 5th, 1931, under the provisions of the Compensation Act of March 4, 1927, (44 Stats. L. 1424), which was made applicable to the District of Columbia by Act of Congress approved May 17, 1928, (45 Stats. L. 600), to enjoin enforcement of a compensation order made by the appellee Hoage under date of January 8, 1931, requiring the appellant to pay appellee Voehl forthwith compensation for temporary total disability, beginning April 6, 1930, to January 3, 1931, a period of 39 weeks, at $25 per week, amounting to $975, and to continue to pay compensation beginning January 4, 1931, at $25 per week, payable every two weeks, until further order of appellee Hoage.

3. Section 21 of said Compensation Act provides:

"The payment of the amounts required by an award shall not be stayed pending final decision in any such proceeding unless upon application for an interlocutory injunction the court, on hearing, after not less than three days' notice to the parties in interest and the deputy commissioner, allows the stay of such payments, in whole or in part, where irreparable damage would otherwise ensue to the employer. The order of the court allowing any such stay shall contain a specific finding, based upon evidence [fol. 67] submitted to the court and identified by reference thereto, that such irreparable damage would result to the employer, and specifying the nature of the damage."

4. Pending the hearing and decision by the lower Court, counsel for appellee Voehl agreed to make no effort to press for the payments required to be made by appellant under said compensation order, but upon the Court entering a final decree on April 14th, 1931, dismissing the bill, counsel for said appellee Voehl stated that he proposed to take steps to enforce such payments in the manner authorized by said Compensation Act, which provides for the entry of a supplemental order by the appellee Hoage and the entry of judgment thereon against the insurance carrier.

5. As shown by the record filed in this Court, appellant thereupon filed a motion in the lower Court for a stay of said payments and such motion was denied. Appellees, however, agreed to take no action to enforce payment, provided appellant promptly perfected its appeal to this Court and renewed such motion here.

6. Unless this motion is granted, appellee Voehl is in a position to and threatens to enforce payment of compensation, in the manner provided by the statute. In such event, appellant would be required to pay a lump sum of $975, and pay $25 per week since January 4, 1931, and continue to make such payments every two weeks, or incur the 20% penalty provided for failure to make such payments when due. In such event, appellant would suffer irreparable damage, in that, in the event the award should be ordered by the Court of Appeals to be set aside, the appellant would be unable to recover back the amount of such payments as shall have been made prior to such final decision, because the appellee Voehl is a non-resident of the District of Columbia, has no property in said District [fol. 68] and only a small amount of personal effects and a small equity in property located in Maryland, as more fully set forth in the affidavit hereo attached and made part hereof.

7. Appellant is financially responsible, so that appellee Voehl will ultimately sustain no financial loss, if the final decision is in his favor.

G. Bowdoin Craighill, Chas. B. Tebbs, Frank H. Myers, Attorneys for Appellant.

[fol. 69] In Court of Appeals of the District of Columbia

[Title omitted]

Affidavit in Support of Motion to Stay Payments of Compensation

State of Pennsylvania,
City of Philadelphia, ss:

I, E. W. Miller, being first duly sworn, on oath depose and say that I am Vice President of the Indemnity Insurance Company of North America, a corporation, the appel-

lant in the above entitled cause, and I am authorized to make this affidavit on behalf of said appellant corporation; that said corporation has caused an investigation to be made concerning the appellee, Karl F. Voehl, and as a result thereof learned that said Voehl was and is a resident of Maryland and a non-resident of the District of Columbia; that he owns no property in the District of Columbia, and so far as appellant has been able to discover, said Voehl owns no property in Maryland except a small amount of personal effects; that affiant has read the motion and memorandum hereto attached and verily believes that the facts therein and herein stated are true and, if it should be finally decided that said Voehl is not entitled [fol. 70] to compensation, that appellant will be unable to recover the payments which it shall have made to him.

E. W. Miller. (R. R. R.)

Subscribed and sworn to before me this 7th day of July, 1931. Susie E. Weigand, Notary Public. Notary Public. My commission expires March 7, 1933. (Seal.)

[fol. 71] [File endorsement omitted.]

[fol. 72] In Court of Appeals of District of Columbia

[Title omitted]

Order Denying Motion to Stay Payments—Oct. 10, 1931

On consideration of the motion to stay payments required by compensation order of January 8, 1931, in the above entitled cause, It is ordered by the Court that said motion be and it is hereby denied.

[fol. 73] Minute entries of argument and submission, April 6th and 7th, 1932, omitted in printing.

[fol. 74] IN COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

No. 5435

INDEMNITY INSURANCE COMPANY OF NORTH AMERICA, a Corporation, Appellant,

v.

ROBERT J. HOAGE, Deputy Commissioner for District of Columbia of the United States Employees' Compensation Commission, and Karl F. Voehl, Claimant, Intervening Defendant

Appeal from the Supreme Court of the District of Columbia

(Argued April 7, 1932. Decided May 9, 1932)

G. Bowdoin Craighill, Charles B. Tebbs, and Frank H. Myers, of Washington, D. C., for appellant.

Leo A. Rover, John J. Wilson, Israel J. Mendelson, of Washington, D. C., for appellees.

(Before Martin, Chief Justice; Robb, Van Orsdel, and Groner, Associate Justices)

OPINION

VAN ORSDEL, Associate Justice:

This appeal is from a decree of the Supreme Court of the District of Columbia dismissing a bill in equity filed by appellant insurance company to enjoin the enforcement of a compensation award made by defendant, Deputy Commissioner Hoage, in favor of Karl F. Voehl, an employee of the National Electric Supply Company, which company carried compensation insurance with the plaintiff corporation.

It appears that while Voehl was driving his own automobile from his home in Maryland to his employer's warehouse in Washington the automobile overturned as the result of a defect in the steering gear, causing the injuries complained of. The accident occurred on Sunday, April 6, 1930, at a point between Voehl's residence and his place of employment.

It further appears, from the evidence, that on the morning of the accident Voehl, in Company with his brother-in-

law, was on the way from his home to the warehouse of his employer to get a load of ashes which they planned to dump in a mudhole in the road near Voehl's residence. The evidence discloses beyond dispute that the main object of the [fol. 75] trip was to obtain the load of ashes. It is, however, claimed by Voehl that it was his intention when he reached the warehouse to clean up some trash which had accumulated there. It is conceded, however, that this was not part of Voehl's duties. He was "Head of the products division," which involved the management of the warehouse, supervising the unloading of refrigerators at the warehouse, unpacking, delivering, and installing them in customers' homes, and the keeping of the buildings in order with special reference to the observance of the fire regulations. He was also "Service manager," in charge of the company's twenty-four hour a day service on refrigerators in customers' homes. He had from eight to twelve men under him at the warehouse, and two service men to take care of calls. Voehl's regular hours were from 7.30 a. m. to 5.30 p. m., with an hour off for lunch. To take care of service calls the company had installed in his home a telephone, and when a call came from a customer after regular store hours it was relayed to Voehl's home. Voehl would either take care of the call personally or instruct one of the service men to do so.

In attendance on service calls outside of regular hours Voehl was allowed overtime pay from the time he left his home until his return, and if he used his own automobile he was allowed five cents per mile. No allowance was made for his automobile in going to and from work during the week days. If he deemed it necessary to go to the warehouse on Sunday he was not required to obtain special authority to do so, and when he made such a trip, if in connection with his work and in the interest of his employer, he would receive overtime pay and his mileage for use of the automobile.

Voehl was awarded compensation by Deputy Commissioner Hoage under the provisions of the longshoremen's and harbor workers' compensation act of March 4, 1927, 44 Stats. 1424, made applicable to the District of Columbia by the act of Congress of May 17, 1928, 45 Stats. 600. The bill for injunction in this case was filed under the provisions of section 21 of the compensation act on the ground that the

claim does not come within the provisions of the compensation act, averring that the commissioner's finding is "not in accordance with law," and is contrary to the evidence presented at the hearing. The sole question before the court, therefore, is whether or not Voehl's injury arose out of and in the course of his employment.

It is urged by counsel for appellee that the findings of the deputy commissioner are not subject to review by the courts where there is a conflict in the testimony—in other words, that while the courts may review the commissioner's conclusions of law they may not set aside his findings of fact merely because they might disagree with his conclusions. Section 20 of the compensation act provides: "In any proceeding for the enforcement of a claim for compensation under this act it shall be presumed, in the absence of substantial evidence to the contrary, (a) that the claim comes within the provisions of this act."

This statutory presumption, however, furnishes merely a basis for proof and not a substitute therefor. It does not shift the burden of proof from the claimant to prove by substantial evidence that the injury arose out of and in the course of his employment. To determine whether or not the commissioner's conclusions of law are correct it is necessary for the court to ascertain whether they are supported [fol. 76] by sufficient evidence. An order based upon insufficient evidence is an order contrary to law, and to determine this question a review of the evidence becomes essential. As was said in Interstate Commerce Commission v. Louisville & Nashville R. R. Co., 227 U. S. 88, 92, "the legal effect of evidence is a question of law. A finding without evidence is beyond the power of the commission. An order based thereon is contrary to law and must, in the language of the statute, 'be set aside by a court of competent jurisdiction.' "

In determining whether the evidence is sufficient to support the award in this case, we are confronted with the general rule applicable in compensation cases "that an injury suffered by an employee, in going to or returning from the employer's premises where the work of his employment is carried on, except in special instances not here involved, does not arise out of his employment so as to entitle him to compensation." Podgorski v. Kerwin, 144 Minn. 313; 175 N. W. 694; Nesbit v. Twin City Forge Company, 145 Minn. 286; 177 N. W. 131.

As suggested in the Minnesota cases, there are exceptions to this general rule. A common exception is where the employee is injured in and about the employer's premises or immediately adjacent thereto where the injury occurs while defendant is immediately approaching or coming upon the employer's premises. Cudahy Packing Company v. Paramore, 263 U. S. 418. The instant case does not belong within this exception, since the accident occurred several miles from Voehl's place of employment.

Another exception is where the employer furnishes transportation to his employees and an injury is suffered by the employees in going to or from his work in the vehicle furnished by the employer and under his control. This exception, however, does not apply to a case where the employee uses his own automobile, even though he may be paid by his employer for its use. Grathwold v. Nassau Point Club, 216 App. Div. N. Y. 107; 243 N. Y. 567; Artmeyer v. Mason, 220 App. Div. N. Y. 787. Another exception would arise where Voehl outside of his regular hours was called upon as service manager to take care of a service call for a customer. This exception does not apply here, since Voehl was not engaged in that sort of service when the accident occurred.

The evidence clearly established, we think, that the purpose of the trip on the Sunday morning of the accident was to procure a load of ashes for Voehl's personal use, and that if in fact he intended to remove some trash, this was merely incidental to the general purpose for which the trip was made. Voehl at the time and place of the injury was not performing any duty in the course of his employment. The cause of the accident was a defect in his own automobile over which the employer had no control and in which he was driving at the time without any order from his employer.

In McNicol's Case, 215 Mass. 497, Chief Justice Rugg in an able opinion said:

"In order that compensation may be due the injury must arise out of and also be received in the course of the employment. Neither alone is enough. * * * It is sufficient to say that an injury is received 'in the course of' the employment when it comes while the workman is doing the duty [fol. 77] which he is employed to perform. It 'arises out of' the employment, when there is apparent to the rational

mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Under this test, if the injury can be seen to have followed as a natural incident of the work and to have been contemplated by a reasonable person familiar with the whole situation as a result of the exposure occasioned by the nature of the employment, then it arises 'out of' the employment. But it excludes an injury which cannot fairly be traced to the employment as a contributing proximate cause and which comes from a hazard to which the workmen would have been equally exposed apart from the employment. The causative danger must be peculiar to the work and not common to the neighborhood. It must be incidental to the character of the business, and not independent of the relation of master and servant."

Here there is no causal connection whatever between any duty which Voehl was required to perform and the resulting injury. The accident was in no sense a natural incident of the work of the duties imposed upon Voehl, neither did it arise out of the nature or character of his employment. To sustain the present case would amount to making the employer an insurer against all accident to his employees. To an employee injured as was Voehl in this case there is strong inducement to claim that he was on his way to perform some service incidental to his employment, but the claim advanced is in fact totally foreign to the motive which prompted the trip. In this instance the proximate cause of the accident is too remote to bring the case within the provisions of the compensation act.

The decree is reversed with costs.

Josiah A. Van Orsdel, Associate Justice.

A true copy. Test:

——— ———, Clerk Court of Appeals, D. C.

[fol. 78] In Court of Appeals of District of Columbia
April Term, 1932

* * * * * * *

No. 5435

Indemnity Insurance Company of North America, a Corporation, Appellant,

vs.

Robert J. Hoage, Deputy Commissioner for District of Columbia of the United States Employees' Compensation Commission, and Karl F. Voehl, Claimant, Intervening, Defendant

Decree—May 9, 1932

Appeal from the Supreme Court of the District of Columbia

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued by counsel. On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the decree of the said Supreme Court in this cause be and the same is hereby reversed with costs.

Per Mr. Justice Van Orsdel, May 9, 1932.

Mr. Justice Hitz took no part in the consideration or decision of this case.

[fols. 79-83] Petition for rehearing, covering four pages, filed May 26, 1932, omitted from this print. It was denied and nothing more by order of May 27, 1932.

[fol. 84] In Court of Appeals of District of Columbia

[Title omitted]

Order Denying Rehearing—May 27, 1932

On consideration of the petition for a rehearing in the above entitled cause, It is ordered by the Court that the petition be and it is hereby denied.

[fol. 85] IN COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[Title omitted]

ORDER OF SEVERANCE—Filed July 29, 1932

To the appellee in the above-entitled cause, to wit, Robert J. Hoage, Deputy Commissioner for the District of Columbia, United States Employees' Compensation Commission, and his attorneys and counsel of record:

Upon consideration of the motion of Karl F. Voehl for an order of severance in the above entitled cause, and of notice served upon counsel for the co-defendant in said cause, and it appearing to the Court that demand in writing has been duly made upon the above named co-defendant, to-wit Robert J. Hoage, Deputy Commissioner for the District of Columbia, United States Employees' Compensation Commission, to join in the petition of Karl F. Voehl to the Supreme Court of the United States for the allowance of a writ of certiorari for the purpose of reviewing the judgment of the Court entered herein on the 9th day of May, 1932, and that the said co-defendant or his solicitors of record have been duly notified in writing to appear and show cause why an order of severance should not be made and have failed to appear or indicate their intention of joining in said application for writ of certiorari, it is therefore this — day of August, 1932,

[fol. 86] Ordered that the said Karl F. Voehl be and it is granted a severance from his co-defendant in the above entitled cause for the purpose of filing his petition and application to the Supreme Court of the United States for allowance of a writ of certiorari to review the final judgment and decree entered in the above cause by this Court.

It is further found and ordered that the rights of Karl F. Voehl are so separate from the rights of his co-defendant, that he is entitled to and is hereby granted a severance from his co-defendant for the purpose of prosecuting his said application for allowance of a writ of certiorari by the Supreme Court of the United States to review the final judgment and decree of this Court entered in the above entitled cause.

George E. Martin, Chief Justice, Court of Appeals, D. C.

[fol. 87] [File endorsement omitted.]

[fol. 88] IN COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[Title omitted]

DESIGNATION OF RECORD—Filed July 29, 1932

Now comes the appellee Karl F. Voehl, by his attorney and requests the Clerk to prepare a transcript of record on writ of certiorari to the Supreme Court of the United States in the above entitled cause and include therein the following:

1. Record.
2. Motion to stay payments of compensation and the order denying the said motion.
3. Argument of cause.
4. Opinion and decree.
5. Petition for rehearing and the denial of the same.
6. Order for severance.
7. This designation.

Israel J. Mendelson, Israel J. Mendelson, Attorney for Appellee, Karl F. Voehl.

Service of a copy of the foregoing designation of record acknowledged this 27th day of July, 1932.

McKenney, Flannery & Craighill, by R. A. Bogley, Attorneys for Appellant Indemnity Insurance Company of North America.

[fol. 89] [File endorsement omitted.]

[fol. 90] Clerk's certificate to foregoing transcrpit omitted in printing.

Endorsed on cover: File No. 37,012. District of Columbia Court of Appeals. Term No. 315. Karl F. Voehl, petitioner, vs. Indemnity Insurance Company of North America. Petition for writ of certiorari and exhibit thereto. Filed August 24, 1932. File No. 37,012.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 21, 1932

The petition herein for a writ of certiorari to the Court of Appeals of the District of Columbia is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.